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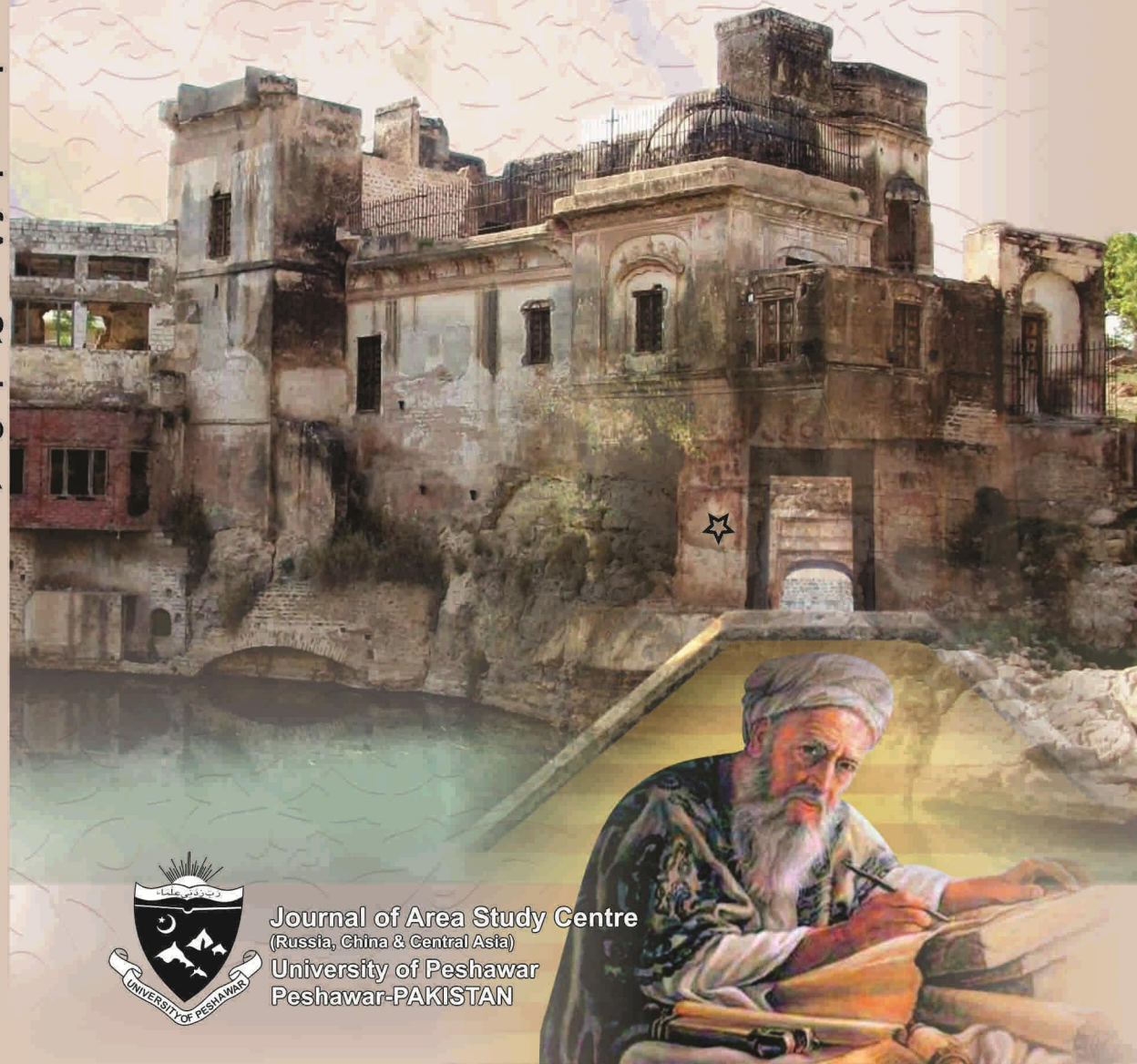
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Cover Image
Al-Beruni University at Katasraj Mandir

Al-Baruni learnt Sanskrit and calculated the circumference of the Earth during his stay at Katasraj Mandir. His book 'Kitab-ul-Hind' written in the 11th Century contains a vivid description of this seven temple complex of Katasraj. It is one of most holy shrines of Hindus, built during the Hindushahiya period (650-950 AD), and located 25 km from the Kalar Kahar, (Punjab, Pakistan) exit on the M2 motorway linking Lahore and Islamabad. According to Hindu mythology Lord Shiv wept so profusely on the death of his beloved wife Sati that two holy ponds, one at Pushkar in Ajmer and other at "Katas Shail" meaning incessant flow tears in Sanskrit, came into being with his tears.

Source: <http://www.bjp.org/images/upload/publications/ktasraj-EV.pdf>

DEMYSTIFYING TRIBAL AUTONOMOUS GOVERNANCE: A CRITICAL APPRAISAL OF MALIKI SYSTEM IN FEDERALLY ADMINISTERED TRIBAL AREAS (FATA)

Sarfraz Khan and Noor Ul Amin***

Abstract

The paper argues that the British Empire strengthened an institution known as [Recognized/Enlisted] Maliki granting 'so-called' muwajjab, i.e., paid individuals allowances/benefits, both in cash and kind, to create an elite loyal to the Crown. Ostensibly Malik, the chief of a qawm, clan/subtribe/tribe, has been a liaison between his tribemen and the political administration in tribal areas (now FATA). He settles intra clan/subtribe/tribe disputes, as a member of a Jirga, relating to law and order. In 1867, Robert Sandeman introduced the Maliki system first in Baloch areas of Punjab (included then NWFP, now KP and tribal areas) and now Balochistan. Prior to the British occupation, a Malik has been an elder, 'spingirey', respected by his tribal segment owing to links in the genealogical chain. There exist three, almost hierarchical, types of Maliks, Those: (1)enlisted/appointed during the British era and in receipt of Lungi/kharcha; (2)selected/appointed from amongst Ayub Khan's Basic Democrats in 1960s and in receipt of Lungi; (3)appointed Malik/lungi holder by the Political Agent, approved by the Governor of the then NWFP, now Khyber Pakhtunkhwa. The creation of hereditary privileged position has been against the spirit of egalitarian Pakhtun tribal customs and traditions. After independence, these Maliks became part of an electoral college that elected members of the lower house of parliament representing tribal areas of Pakistan till the introduction of Adult Franchise in 1996. In return for privileges, loyalty to the British Crown transformed into sale/purchase of votes for the powerful, not resolution of disputes or problems of tribesmen in the parliament. The Malik, a go between the tribesmen and the state could not bridge increasing gap between the state and the inhabitants of FATA. Extension of Peoples Representation Act 1976 to FATA allowed

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ordinary inhabitants to contest and cast vote to elect members of parliament, not Malik alone. A critical appraisal of the Maliki system in FATA-in relation to autonomous governance is required. Revisiting published sources and interviews with both stake/non-stake holders in FATA provide better understanding of good governance.

Keywords: Swat Nama, Mountstuart Elphinstone, Tribal chief, Robert Bruce, Sir Robert Groves Sandmen, Forward Policy, Khasadari System, Levies System, FCR, Political Agent.

Federally Administered Tribal Areas (FATA) is a narrow belt, populated by ethnic Pashtun, stretched along the Pak-Afghan border, known as the Durand Line.¹ The British administratively divided tribal areas into two categories: Political Agencies, headed by, Political Agents (PA) and Frontier Regions (FRs) by Assistant Political Agents (APA). Both were administered by same rules and procedures having a type of administrative hierarchy. Sandeman, in 1876, devised a system that was followed by Lord Lytton (1831-1891)², in 1877, wherein the central government had direct control of the administration and Frontier Policy. A system of political agencies was developed in FATA, which supplanted an administrative structure, where political agents worked as the main government functionaries. They remained answerable to the officer, representing the Central Government. This office made alliances and developed a working relationship with the local Maliks. It controlled the Maliks or bought their loyalties by authorizing payment of allowances, *muwajjab*, benefits both in cash and kind.³

To facilitate the Political Officer,⁴ a Malik played the role of a mediator between the Government and his respective clan(s). The local chief or tribal elder, was designated as an intermediary between individual members of a clan/subtribe/tribe and the colonial authority and assisted in implementing policies of government. To create reliable, trustworthy local elite, the British

¹ Sarfraz Khan, Special Status of FATA: Illegal Becoming licit. *Central Asia*, 63, Peshawar: Area Study Center University of Peshawar, 2008, 8.

² Robert Buler-Lytton, 1st Earl of Lytton was an English statesman and poet. He served as Viceroy of India (1876-1880). As a Viceroy of India he has been criticized for his handling of the great Famine of 1876 -78 and the Second Anglo-Afghan war. Britain was deeply concerned about Russian attempts to increase its influence in Afghanistan, which provided a Central Asian buffer state between the Russia and British India. In 1878, Lytton sent an emissary to Afghanistan who was refused entry. The Amir of Afghanistan, Sher Ali Khan, was perceived at this point to have sided with Russia. Lytton ordered an invasion which sparked the Second Anglo-Afghanistan War. Britain won virtually all the major battles of this war and in the final settlement, the Treaty of Gandamak.

³ The *Muajib*, the allowance paid to a tribe or a *Khel* as a unit, is probably the most important of the subsidies. It is usually turned over the *Maliks* representing the tribe in the presence of a *Jirga*. Distributions within the tribe is according to long-standing custom, and dissension over the division is rare.

⁴ From 1879 to 1902 Political Agent was known as Political Officer.

introduced a system of awarding Maliki i.e., in return for loyalty, one was rewarded with special status, financial benefits, and official recognition of influence, over the tribe. In reality, it translated into noninterference of the tribes into British lines of communication and ceasing raiding activities into the settled districts. Thus, a Malik became intermediary between the tribe and the Agency administration.⁵

A Pakhtun Malik is merely first amongst the equals: he may acquire prominence within clan owing to personal endeavors and/or adhering to customs and traditions. A grey-hair man having more male arms (brothers/sons), blessed with decent conversation skills may inspire fellow tribesmen by advocating their cause, can aptly be called a Malik.⁶ No doubt, wealth, family, influence, approval of the government etc., have also been contributory factors towards attaining and holding the title of Malik. Yet Malik's personal character and ability has been determining the extent of his influence. Thus, tribes administered/governed by a system of Political Agents, required a Malik, a go-between the tribe and the administrator, as its necessary part. The prestige of the Malik played a pivotal role in ensuring tribal obedience. In the settled areas, the British granted patronage to individual making them *Khan(s)* who served as instruments of the colonial administration there by symbolizing and preserving the feudal social system.⁷

Historically, each clan/subtribe/tribe put forward a person, possessing discrete leadership abilities and strong linkages with the administration as Malik, to represent them. It is evident that in the presence of Frontier Crimes Regulation (FCR), a Political Agent has attained considerable leeway in appointment of a Malik, and with passage of time, quantity of Maliks increased enormously. Malik has been formally registered with the Agency administration, some possess real patriarchal authority, others, neither carry much influence over clan/subtribe/tribe nor even reside in the tribal areas. Before the British Raj, Maliks used to be respected elders of a section of

⁵ Hopkins argued that the British by elevating 'a specific individual the representative of tribal interests when dealing with the state, the subsidy policy embedded new hierarchies of powers in Pukhtun society: The muwajjab was the primary method by which the British secured their relationship with the tribes. Money was integral to the tribal problem in a variety of ways. According to H. de Watterville, allowance was a system by 'which the tribes, in return for a fixed annual payment, pledged themselves to take that particular route under their protection, to abstain from raiding British Indian territory and to perform certain minor services. The allowance system came under fire as being a form of blackmail and for creating rifts in an egalitarian and classless society.

⁶ *Pakhtunkhwa: A Development Framework*. National democratic consultative process (NDCP), 2003, 43.

⁷ Sher Muhammad Mohmand, *The Pathan Customs*. Former Political Agent, Mohmand Agency, 104.

clan/subtribe/tribe possessing mandatory vital contacts in the genealogical tree.⁸

Robert Bruce,⁹ Deputy Commissioner, District, Dera Ismail Khan (1888-90), subsequently, Commissioner Derajat Division, Punjab Province (1890-96), accepted a system created by Sir Robert Groves Sandeman (1835-1892),¹⁰ the Chief Commissioner British Balochistan Province (1877-1892), earlier, District Officer, Dera Ghazi Khan (1866-1876). Robert Sandeman, deputized by Bruce, effectively placated the Khanate of Kalat¹¹ unlocking previously shut routes in Balochistan using a system of “penetration and occupation.”¹² Sandeman operated with Baloch chiefs and Maliks, paying cash/in kind in return for definite services, and raised levies that was deployed and resided in cantonments to safeguard important routes to the British. Sandeman constructed a network of roads linking cantonments at tactical points in Kalat and the adjoining region. In return for support, he sanctioned the Balochi chiefs and Maliks limited self-rule. Entitled British Political Agents organized *jirga* in order to resolve disputes and discuss issues important to British interests. However, the fulcrum to the peddled *Sandeman System*¹³ was the rapid advance of large contingent of British forces on newly constructed roads to subdue turbulences and protect the chiefs and Maliks against trials to their authority.¹⁴

⁸ Matthew W. Williams, *The British Colonial Experience in Waziristan and its Applicability to Current Operations*. Kansas: School of Advanced Military Studies United States Army Command and General Staff College Fort Leavenworth, 39.

⁹ Salman Bangash, *The Frontier Tribal Belt: Genesis and Purpose under the Raj*. Karachi: Oxford University Press, 2016, 27.

¹⁰ Sir Robert Groves Sandeman, Colonial British Indian officer and administrator, was the son of General Robert Turnbull Sandeman. Sandeman introduced an innovative system of tribal pacification in Balochistan, informally termed 'Sandemanization', that was in effect from 1877 to 1947. He gave financial allowances to tribal chiefs who enforced control, and used British military force only when necessary. However, the Government of India generally opposed his Forward Policy methods and refused to allow it to operate in India's North West Frontier. Historians have long debated its scope and effectiveness in his mostly peaceful spread of Imperial influence.

¹¹ The Khanate of Kalat was founded in 1666 by Mir Ahmad Khan Qambrani Baloch. The Khanate reached at its peak during the period of Khan of Kalat Mir Naseer Khan in 1758. The territories controlled by the state fluctuated over the centuries but eventually were established by treaties with the British Agent Robert Sandeman in the late 19th century. From 15 August 1947 to 27 March 1948, the region was de facto independent before acceding to Pakistan on 27 March 1948. The Balochistan States Union was formed on 3 October 1952 with three neighbouring states. The Khanate of Kalat ceased to exist on 14 October 1955 when the province of West Pakistan was formed.

¹² James W. Spain, *The Pathan Borderland*. The Hague: Mouton Co., 1963, 119.

¹³ “Good for me but not to other” The “Sandemen System” of pacification as Applied to Balochistan and North West Frontier, 1877-1947.

¹⁴ Sultan-i-Rome, *The North – West Frontier (Khyber Pakhtunkhwa) Essays on History*. Karachi: Oxford University Press, 2013, 369.

In late 1889, Sandeman held a huge *jirga* at Appozai, Fort Sandeman, near Zhob, Balochistan,¹⁵ participated by all the adjacent tribes, including the Mehsud and Wazir. The tribes during *jirga*, in January 1890, agreed to keep the Gomal Pass¹⁶ open in return for allowances. Adhering to the Sandeman system, Bruce allocated allowances to the tribal Maliks, in return, for a tribal levy to serve militia in cantonments, built along routes to the key passes.¹⁷

In 1892, five Mehsud tribesmen murdered an Officer of British Public Works Department, five *sawar* and a *sepo*y of the British Indian Army.¹⁸ Murders were instigated partially by a Mehsud Malik belonging to the Abdullai sub-tribe, an inadvertent excluder from the allowance scheme, developed after 1889 *jirga*, by the British, viewed Bruce. Remarkably, Bruce was able to coax the tribes into handing over, the culprits, get them tried, convicted, sentenced to jail, and fined. The application of British law against Mehsud tribesmen generated indignation amongst some Mehsud elders, especially, Mulla Powindah.¹⁹ Sir Evelyn Howell,²⁰ considered the *Mulla* as “the dominant factor in Mehsud politics in this period,”²¹ stressing the threat of religious leaders to the British and the collaborating Maliks. The agitating *Mulla* and his allies reacted by murdering the Maliks, facilitators, of handing over of the convicted tribesmen. Stunned at this

¹⁵ Zhob is a district in the north west of Balochistan province. Zhob district is a PATA. Before the British the place was known as Apozai, the town was found by Robert Groves Sandeman, who was a colonial British Indian Officers and administrator, and renamed it Fort Sandeman in 1889. Sandeman was the governor general in Balochistan since 1877 till his death in 1892 at Bela the capital of Las Bela state. In 1889 zhob valley Gomal pass were taken under the control of British government. Major tribes of Zhob include Madokhail, Kakar, Babar, Lawoon and Nasar. The name of the place was changed from Fort Sandeman to Zhob on 30 July, 1976 when by the then Prime Minister of Pakistan, Zulfikar Ali Bhutto. Zhob means bubbling water. It refers to the karez water which pops up everywhere when there is no drought situation.

¹⁶ Gomal Pass is a mountain pass on the Durand Line border between Afghanistan and South Waziristan. It takes its name from the Gomal River and is midway between the legendary Khyber Pass and the Bolan Pass. It connects Ghazni in Afghanistan with Tank and Dera Ismail Khan.

¹⁷ The Viceroy, Lord Lansdowne, informed the Afghan Amir that the Gomal scheme was a strategic and political benefit to the British Government and therefore to be blessed, that it to sever all connections to the British Government and accept allegiance to the Amir. The appearance of the Afghan Sirdar split the leading Maliks into pro-Afghan and pro-British factions, which contributed to increased violence against the British.

¹⁸ James W. Spain, *The Pathan Borderland*. The Hague: Mouton Co., 1963, 116.

¹⁹ *Mulla* Powindah (Mohiuddin Mahsud) was religious leader in the Pashtun tribe of the Mahsuds, who earlier studied at a madrasa in Bannu, declared himself *badshah* (king) of the *taliban*, provoking fear among the pro-British Maliks. He used the Tochi valley as his centre of operations against the British. He became known first as the Selani Mullah.

²⁰ Evelyn Howell served in Waziristan as a Political Agent and wrote vivid account of the British experience during this period.

²¹ Robert Lane Sammon, *Mullas and Maliks: Understanding the Roots of Conflict in Pakistan's Federally Administered Tribal Areas*. Master's Thesis, University of Pennsylvania, 2008, 49.

injury to his power, Bruce urged the tribal leaders to take punitive action against the murderers of the Maliks, but the response was luke warm. Bruce followed instructions of The Government of India “to continue his communications with the tribal *jirgas*, with the object of procuring, if possible, the punishment of the murderers of the Maliks by the tribes themselves.”²² Such efforts failed, primarily due to lack of superior military assistance leading to non-implementation by Bruce of the Sandeman System in Waziristan.²³

The outbreak of violence created doubt over list of official Maliks registered by Bruce. To reform the apparent inaccuracies, in 1895, Bruce formed a more elaborate list dividing the Maliks into five classes, taking into account “the measure and extent of their influence.”²⁴ His inability to control the *Mulla* via the tribal Maliks, Bruce offered him a hefty allowance too. The *Mulla* conceded, in case of keeping payment secret. Recognizing his tall sway, an allowance thrice more than any of Maliks, was agreed upon. The *Mulla* was in receipt of a regular allowance from Nasarullah Khan (1874-1920),²⁵ brother of the Afghan Amir. In Waziristan, throughout the 1890s, the British continued efforts to gain support of tribes in close cooperation with the Maliks. The Mehsud Maliks in their territory were held accountable by the British for all offenses but tiny groups of tribesmen continued attacks and committed acts of robbery. Many of the Mehsud Maliks associated these misdeeds to Mulla Powinda’s faction. Mournful of the situation, the Maliks complained to the British that “they were between the devil and deep sea”. And the devil seemed to be drawing nearer.²⁶

In 1900 at the eve of Curzon’s²⁷ frontier expedition, John Gordon Lorimer (1870-1914),²⁸ assistant to the Viceroy, wrote an official memo to

²² John Gordon Lorimer, *Customary Law of the Main Tribes in the Peshawar District*. “nd ed., Revised by J.G. Acheson. Peshawar: NWFP Government Press, 1934, 114.

²³ Retrieved from <http://discovery.nationalarchives.gov.uk/details/r/9e3a41a5-5750-4605-9623-466f107093b7>, accessed on 5/21/2017.

²⁴ C.E. Bruce, *Waziristan 1936-37*. Aldershot: Gale and Polden Ltd., 1938, 89.

²⁵ His brothers were Habibullah Khan and Mohammed Omar Khan. Nasrullah's birth occurred during a period in which his father was living in exile in Russian Turkestan. On July 22, 1880, Nasrullah's father was recognised as Amir following the end of British occupation of Afghanistan, on the condition that he align Afghanistan's foreign policy with Britain. As a consequence of his father's ascension of the throne, Nasrullah and his elder brother Habibullah became crown princes of Afghanistan.

²⁶ Robert Lane Sammon, *Mullas and Maliks: Understanding the Roots of Conflict in Pakistan's Federally Administered Tribal Areas*. Master's Thesis, University of Pennsylvania, 2008, 53.

²⁷ Curzon predicted, the system proved ineffective over the long-term at stemming resistance to British rule. From 1857 to 1947, tribesmen murdered four of thirty-four British political agents. One even took his own life out of utter frustration in his efforts to subdue the tribes. Despite its flaws, this *patchwork* system became the basis for the administration that governs the tribal areas.

²⁸ John Gordon Lorimer was a British diplomat, historian and colonial administrator. The Lorimer family was intimately associated with colonial service; he worked in the Indian

the Punjab Government enquiring, was Bruce's Maliki system workable? "With reference to the future management of the tribes the Government of India will only observe that the best method of dealing with the Pathans of Waziristan appears to be still a matter for experiment."²⁹ W. R. H. Merk,³⁰ Commissioner Derajat (1900-1905), approved Lorimer's doubts, in 1900, declaring Bruce's Maliki System impractical due to the democratic nature of the tribes of Waziristan. Instead, Merk paid allowances to selected Maliks not to the entire tribe, held accountable for offenses the entire tribe, rather than individuals. As a consequence of failure of the tribes to agree to pay outstanding bill of damages in December 1900 Merk introduced in a blockade, stopping their access to markets in the settled areas.³¹ In March 1902, a *jirga* the tribes relented, agreeing to pay the fine and return stolen cattle and rifles obtained from raids. Merk rejoined by restoring payment of allowances to around 1,500 tribesmen. However, Merk's relinquishment of the Maliki system proved short-lived. His successor, P.W. Johnston,³² found Merk's plan not only costlier but tremendously hazardous, since a several thousand strong *jirga* constituted graver security threat. Thus, Johnston fashioned a "conglomerate scheme,"³³ re-establishing the Maliks at a higher allowance and continued lesser payments to a limited number of other male tribesmen. Curzon was not alone in his recognition of the failings of the Maliki system.³⁴

The Maliki system, heavily dependent on the power and influence of the Maliks to coerce tribal compliance, had no formal process that stipulated what made a Malik effective? Rather, the Political Agents or their superiors made such discretionary decisions. As Howell bemoaned a century ago, lists

civil service and was stationed first in Punjab and later in the restive Northwest frontier province. His work included: *Customary Law of the Main Tribes in the Peshawar District (1899)*, *Grammar and Vocabulary of Waziri Pashto (1902)* and *Gazetteer of the Persian Gulf, Oman and Central Arabia (1908, 1915)*.

²⁹ Norman Bolton, *Summary of the Tribal Custom of the Dera Ismail Khan District*. Peshawar: NWFP Government Press, 1907, 129.

³⁰ The publication of WRH Merk's Report on the Mohmands completes a trilogy of three rare and valuable accounts of three major tribes living in the tribal areas. Merk's Report, like the other two authoritative monographs by E Howell on the "Mahsuds" (Mizh: a monograph on government's Relations with the Mahsud tribe, Oxford University Press.

³¹ James W. Spain, *The Pathan Borderland*. The Hague: Mouton Co., 1963, 119.

³² Robert Nichols, *Settling the Frontier: Land, Law and Society in the Peshawar Valley*. Karachi: Oxford University Press, 2001, 27-30.

³³ *Ibid.*, 31.

³⁴ Howell commented on the inherent difficulty of creating a list of representative Maliks. To begin with, the rapacity of the Mehsums is insatiable; to go on with, tribal society is not static, and a list that is perfect to-day will be imperfect next week; finally, the distribution list is regarded as a warrant of precedence, and no race of men that has ever existed has ever been reasonable over questions of precedence, as perhaps the records of other hills besides those of Waziristan could testify.

of Maliks carved by the Political Agents' were often incorrect, or needed perpetual updating.³⁵

Both Political Agents and the Maliks had varied reasons to maintain the status quo; the corruption of the Maliks coupled with other social and economic changes nurtured sensitivities of inequality and corruption that ordinary tribesman cognizant of the greater freedoms of their cousins in the settled areas, had trouble enduring. The system did not create the anarchy that encompasses today, it shaped an environment that allowed it to spawn since the highest executive and judicial official, in each Agency, the Political Agent, had the power to appoint Maliks to serve as his intermediaries to the tribes. Each Malik was entitled to a stipend and exercise the right to serve on the Electoral College, the Agency Council, or to become a member of a *jirga*.³⁶ Malik can also act as government contractor, a role that empowers him to profit financially from government-funded development projects.

In addition to the Maliks, there are *Lungi-holders*³⁷—individuals appointed by the government and entitled to a stipend. There are three hierarchical levels of Maliks, each of which is hereditary and has different degrees of privilege:³⁸

Those *Malik* or *lungi* holders appointed: (1) during the British era; (2) Under President Ayub Khan in the 1960s under *Basic Democracies*; (3) by the Political Agent and approved by the Governor of the then NWFP (now Khyber Pakhtunkhwa).

The Maliki system undermined traditional Pakhtun customs and traditions in a number of ways. The conception of advantageous positions with hereditary rights has been profoundly contravening socially democratic rather egalitarian Pakhtun customs. The bait of privilege and paybacks led to a swift growth in number of Maliks in subsequent decades, giving birth to the proverb “every man is a Malik unto himself,” hence lessening their representative character.³⁹ According to Ahmad Shah Mohabbat,

³⁵ Salman Bangash, *The Frontier Tribal Belt: Genesis and Purpose under the Raj*. Karachi: Oxford University Press, 2016, 127.

³⁶ Monuntstuart Elphinstone, *An Account of the Kingdom of Caubul*. London: John Murray, 1815, 291.

³⁷ Lungi holders were of lesser status than Maliks, but were similarly appointed by the government and entitled to a stipend.

³⁸ The century old dependence imprinted in minds. Monthly *Kharcha* I for certain Maliks for nothing. Maliki and lungi allowances @Rs. 4.16/month is the most wanted privilege. Maliki/lungi holders act as Jirga members. Numerous intra-family feuds over lungi issue. Ali Muhammad Jan Orakzai, the then governor of Khyber Pakhtunkhwa is lungi holder.

³⁹ Available data on the number of Maliks and lungi per agency and FR is incomplete. The elders themselves appear conscious of their corruption, yet unable to resist its allure. Ahmed recounts a common sentiment of tribal elders: The Khyber agency, population of 546,730, as having 24 Maliks and 3630 lungi holders, with each Maliki receiving an annual stipend of Rs. 1,811,619. However Ahmed, writing in 1983, estimates that South Waziristan (1972 population of 307,514) had one Maliki per hundred people and further cautions that while every Maliki claims to speak for an entire tribe, most do not even control their extended family group or clan.

“The Maliki system created new modes of deviant behavior that were abhorrent under the pakhtunwali but became permissible given the new incentives. The corruption eroded the Maliks’ perception of legitimacy for many tribesmen. Decades of increased social and economic integration with the settled areas awoke the FATA tribesmen to the spreading democracy of the settled areas, while the Maliks became more detached and less concerned with the interests of the communities they represented”.⁴⁰

For Christian Tripodi⁴¹

“Apart from the fact that the concept of bribery would have been unpalatable to policy-makers, money paid by the political officer to the tribal leader was not a one way arrangement.⁴² For the British, the allowance system had certain benefits.....it allowed for potential political integration and inclusion into British service of the tribes..... the money paid on allowances was in lieu of that which would otherwise be expended on a military presence... it was not a sanctioned system of bribery, although this is not to say that bribes were unheard of”⁴³

Proponents of the system extolled its implications for turning the wild tribesmen from enemies into friends, and bringing them by degrees within the pale of civilization. Merk, the commissioner of the Derajat, was dissatisfied with the Maliki system as a whole. He proposed that an allowance be paid to the tribe rather than to some selected Maliks, and that the government should deal with the tribe as a whole and enforce tribal, instead of individual responsibility in case of offences, (collective responsibility). Robert Warburton (1842-1899),⁴⁴ who pioneered the direct

⁴⁰ Ahmad Shah Mohabbat, *Pakhtun National Self- Determination: The Partition of India and Relations with Pakistan*. Ph.D. dissertation, Graduate School of St. Louis University, 1979, 49.

⁴¹ Dr. Christian Tripodi received his Ph.D. from the department of War studies, King’s college London. After working at the international institute of strategic studies, he joined the defence studies department and was appointed senior Lecturer in 2012. Dr. Tripodi’s research focuses primarily upon the contemporary and imperial age, and the development by western militaries and colonial administrators of techniques designed to build knowledge of ‘alien’ societies. In particular his research focuses upon the complex, unpredictable and often paradoxical consequences that result when military power is instrumentalised on this basis for wider political or military purposes.

⁴² Christian Tripodi, *Edge of Empire: The British Political Officer and Tribal Administration on the North-West Frontier 1877–1947*. London: Asghate, 2011, 74-77.

⁴³ *Ibid.*, 79.

⁴⁴ Colonel Sir Robert Warburton, was an Anglo-Indian soldier and administrator. Half-Afghan and proficient in Pashtu, he served for many years that British political officer in charge of the Khyber Pass. Warburton was born in a Ghilzai by Shah Jahan Begum, niece of the Amir Dost Mohammed of Afghanistan. In 1870 he was appointed to the Punjab commission as an assistant commissioner to the Peshawar division. At the end of September 1872, he was removed temporarily to the sub-district of Yusafzai and stationed at Hoti-mardan, and in

approach to the tribes, records the conviction, after twenty-nine years spent on the Peshawar Frontier that the majority of wars and fights between the British government and the independent tribes were due to the evil intrigues and machinations of Arbabs and Middlemen.⁴⁵

Lord Lytton⁴⁶ in his famous Minutes of 22 April 1877 also opposed the role of Maliks, middleman, or Arbab in dealing with the tribes; instead, he preferred direct link and relations to understand better the system and culture. He informs,

“I think that the employment of Arbab, or middlemen, should be discontinued as much as possible. I do not myself believe that it strengthens our hold even upon the small class we thus employ. For every man gratified by employment, a host of jealousies are raised against him and ourselves..... Even if we could always depend on the absolute loyalty of Arbabs, these men cannot convey to the Native the same clear idea of our views and character that he should gain by personal intercourse with British officers”.⁴⁷

The administration of tribal areas and formulation of tribal policy had constantly engaged the attention of British Empire ever since the border alignment. From “close door” to forward policy, the British Empire carried out many moves in this direction supported by military expeditions, but kept options open. Finally, it evolved a policy of “non-interference” in accordance with the tribal customs and traditions and began governing through the tribal hierarchy of chieftains. The Crown strengthened its hold through an evolutionary process of making inroads into the tribal society by entering into realties of the tribes through Maliks and sectional elders and expanded its area of influence. It gradually established communication links in closed areas and covered them with posts, piquet’s, and forts at strategic points.⁴⁸

The *Khasadari* system, introduced in 1921, placed the responsibility of maintaining law and order on the tribesmen themselves since it has been the most economical way of administering the tribes and also supplemented power and influence of the Maliks. Additionally the system suited

February 1876 he was permanently appointed. He was appointed first political officer of the Khyber Agency in 1879.

⁴⁵ Robert Warburto, *Eighteen Years in Khyber Agency*. Lahore: Sangi Meel Publications, 2005, 40.

⁴⁶ Salman Bangash, *The Tribal Belt: Genesis and Purpose under the Raj*. Karachi: Oxford University Press, 2016, 37.

⁴⁷ Robert Warburton, *Eighteen Years in Khyber Agency*. Lahore: Sangi Mell Publications, 2005, 45.

⁴⁸ According to Akbar Ahmed by encouraging the growth of the chiefly Malik class in the Tribal Areas the British created the foundation of conflict, contradiction, and dysfunction in the society. The political officer was authorized to arbitrarily withdraw, suspend, or cancel Malik status if he deems the individual was not serving his interests. Robert Sandeman was of the opinion that by backing tribal elders who did not enjoy the support of their people would only cause problems in the long run.

government more because not only it required less commitment and responsibility of military in the tribal areas but also enabled extension of government control and enforcement of the government's writ on the tribes by the tribesmen themselves. Since the Khasadars have been recruited, on the basis of Nikat⁴⁹ or Quota, by the tribal Maliks, the Khasadari system is considered a corollary to the Maliki system. The system has often been termed as a colossal favour to the Maliks or even blackmail. Sher Muhammad Mohmand⁵⁰, a former Political Agent, however, considers this criticism unfair, contending Khasadar are used as tribal police to support the authority of the Maliks, as agents to the Government, in maintaining Law and Order, protecting roads, buildings, installations and properties of the Government.

FCR was extended to FATA in 1939, earlier, the British had already been manipulating Jirga and Maliks. The concept of collective responsibility was first floated and practiced by Coke in Dara Adam Khel in 1853 while dealing with Afridis at Kohat Pass. This has not been a Pakhtun tradition and the Malik endorsed it under compulsion not in compliance of traditions. The British expeditions against Pukhtuns were neither planned nor executed by Maliks. The Maliks were just ordered to endorse these acts. It is noteworthy that Jirga, Badraga (Tribal escort for conditional safe passage) and Maliks are Pukhtuns' own institution and traditions. They existed for centuries here as mentioned by Khushal Baba⁵¹ and Elphinstone⁵². The British only encouraged corruption to secure their interest.

⁴⁹ Nikat is the close and detailed organization based on heredity in a tribe. It fixes the share of each class and sub-section, even of each family in all tribal loss and gain, benefits are distributed and liabilities apportioned. It regulate shares in allowances from the government of booty from a raid and equally the amount due in fine under any settlement either with the government or with contending sections.

⁵⁰ Sher Muhammad, *Federally Administered Tribal Areas: A Socio-Cultural and Geo-Political History*, Peshawar, 2003, 37.

⁵¹ Shakeel Ahmad Khan, *Swat Nama of Khushal Khan Khattak* (Edited & Translated Into English). M.Phil. Thesis, Peshawar: Area Study Center, University of Peshawar, 1981, III-IV.

⁵² Mountstuart Elphinstone's (1779 – 1859) book *Account of the Kingdom of Cabul* first published in London in 1815 by M/S Longman Hurst, Rees, Orme, Brown and Murray is the product of his assigned visit to Afghanistan, of which he could only visit the eastern portion and most information was collected at Peshawar from February – June 1809. It took him five years to compose his data in Poona and give the work a book form. His associations with afghans can in all be counted around six months when he entered the area beyond Indus (7th January 1809) and re-crossed Indus (20th June 1809). It is not mere oral collection of data on Afghanistan but is based on all then known oriental (Persian) and European books plus travel accounts. Mountstuart Elphinstone was a Scottish peer: his father John was Lt. Governor of Edinburgh castle, whose two sons James and Mountstuart joined the East India Company at very young age and earned political position as of baronial descent in the company services and Mountstuart becoming Resident at Nagpur. Here he learned both Sanskrit and Persian. He also visited Persia in between this period and was charmed by Persian poetry. Elphinstone in all served in India for 31 years (1796-1827) retiring as governor of Bombay. He was also offered the governor generalship of India later

The duties and responsibilities of the khasadar in tribal structure classify them as the instrument of the tribal will. Bruce positions, though ‘paid by the Government’, Khasadar belong to the tribe.⁵³ The collective territorial responsibility is an important feature of the khasadari system in many ways: Selection through tribal consultations; khasadars’ liability to punishments such as, fines, suspension, arrest --- for misbehavior on the part of the concerned tribe; the accountability to the government, of Maliks and even the whole tribe, for the khasadars’ absence from duty; and the khasadars’ liability to punishment under collective territorial responsibility, in case of offence occurring in their jurisdiction.⁵⁴

This system initially introduced by Sandeman, in 1867, in Derajat was called Levies System. Khasadari, similar to Levies System remained in currency as Badraga/Bardaqa System, i.e., caravans were to be escorted by tribesmen in their area either as good will of Pukhtun or on payment by alien invaders/rulers e.g., Mughal and British⁵⁵. The British monetized this system and permanently placed a certain number of tribesmen to keep roads and communication channels safer.⁵⁶

During the colonial period, political officers dealt with the tribes through elders, their gradual enlistment as Maliks evolved into the formal institution of Maliki, synonymous to the system of tribal administration. Those Maliks in payment of *lungi* allowance, locally called *muajib* (*muwajib*) for political services to the government were called *lungi* holder. Initially the *lungi* or Maliki was not inherited rather terminated upon death of the Malik or *lungi* holder, however, deeper involvement of family in services to the government led the Political Agent to designate the eldest son of the Malikh is successor allowing continuation of the *lungi* allowance or *Muwajib* in his favour. This provided not only continuity in the allegiance of the family to the government but also rendering political services. This institution continued and is still in vogue in FATA.⁵⁷

Besides, the above mentioned allowances paid to the *lungi* holders or tribal Maliks, another kind of *muwajib* or allowance is paid to the tribesmen.

but he declined. Elphinstone remained bachelor, yet his house remained attached to India, his nephew was assuming the position of governor at Bombay and Madras. He died in 1859.

⁵³ Sultan-i-Rome, *The North – West Frontier (Khyber Pakhtunkhwa) Essays on History*. Karachi: Oxford University Press, 2013, 365.

⁵⁴ Altaf Ullah, *Reforms in FATA: Implications for Pakistan and Afghanistan*. Ph.D. dissertation, Area Study Center University of Peshawar, 2014, 48.

⁵⁵ The same type of monetary-cum-escort system was established in Broghal valley, upper Chitral when both the authors personally visited to explore the area of Wakhan Corridor in June 2014. From Broghal to Wakhan Corridor the covered distance was 20 KM, and it was covered by the horses’ back. In between the area, there were four stay points, where the horses were changed and new owner of the horse asked us for money. The journey was on mountainous area, as we climbed ahead, the rate of money increased.

⁵⁶ Ayaz Mandokhel, interviewed by author, Peshawar, June 4, 2017. He is Additional Secretary, Home Department, Government of Khyber Pakhtunkhwa.

⁵⁷ Olaf Caroe, *The Pathans (550Bc-AD1957)*. New York: Macmillan, 1962, 92.

These muwajibs have mostly been paid in lieu of permanent losses incurred by the tribe, for giving up traditional sources of revenue in favour of the government, such as rahdari, toll on passage, goods passing through their territories and jurisdictions.

The muwajibs (concessions/allowances) paid to the tribesmen are the most misunderstood part of the tribal administration. Izzat Awan had contended, these have sometimes been termed as dole-money, considered not appropriate.⁵⁸ He argues, during travels through the tribal areas, one at once realizes that the best cultivable land or land with water facilities has taken over by the British for an Army camp/a post/ a road or an air-field. Since plain land with water facilities was practically nonexistent, indeed a great hardship was caused to the tribes in case they were deprived of such land, means of livelihood. Hence, the British, arranged a fixed annual payment (lease) in return for assets taken away instead of a lump sum payment as compensation.⁵⁹

Olaf Caroe views muwajibs, paid to the tribes, from another perspective. He has pointed but out that the application of force by the army or civil power' to restrain the tribesmen from carrying out raids and depredations, and keeping them passive 'was the negative side of the coin, and that the British administrators were not without positive ideas. The most obvious of these ideas were written agreements and allowances, therefore, during the first twenty years' of their coming to these areas, signed agreements were negotiated with every tribe up and down the Frontier and secured, on paper, everything that the government needed. A clause of these agreements guaranteed 'an annual allowance contingent to the tribes called muwajib but it was subject to their good behavior' and their abiding by the terms of the treaty. These payments might be in the form of compensation for roads through their country, or in recognition of some special service. A good example is that of the Khyber Afridis, whose original allowances were granted in lieu of the tolls which the tribe itself formerly levied by force on all traffic through the pass. Subsequent increases were made to the Afridi allowances as rewards for the signal service rendered by the tribe in remaining staunch through World War I, and as compensation for roads, railways and camps.⁶⁰

Caroe, in the strongest possible terms, has negated those arguments and objections calling the muwajibs blackmail and concluded: All allowances, granted for whatever reason have been conditional, ensuring good behavior and liable to suspension or forfeiture, in part or in whole, in case the tribe

⁵⁸ Izzat Awan, *Pattern of Administration in the Tribal Areas of Pakistan*, Peshawar: Printed Speenzar, 1972, 33.

⁵⁹ Sultan-i-Rome, *The North – West Frontier (Khyber Pakhtunkhwa) Essays on History*, Karachi: Oxford University Press, 2013, 368.

⁶⁰ J. M. Ewart, Sir Evelyn Berkeley Howell, *Story of the North West Frontier Province*, New Delhi: Government Print. and Stationery Office, 1930, 76.

breaks an agreement or commits offences. Suspension has been one of the most effective tools of reprisal upon a lawless tribe, and the value of the allowance system may best be demonstrated in case of relative inability of the government in engaging a tribe not provided subsidies with.⁶¹

There is no doubt, J. G Elliott has observed, that over the years these allowances achieved a considerable degree of success but they were a palliative and not a cure and on occasion they could be the cause of trouble when those who were receiving what they felt to be less than their fair share stirred up trouble to discredit those through whom the political agent dealt when making the payments.⁶² Muhammad Anwar Khan has made the position clear in another way by stating,⁶³ while the settled area contributed though marginally to the revenue income of the state, the tribal belt remained exempt from all kinds of taxes, rather some public monetary assistance, though nominal, was extended to the Maliks, tribes and individuals. Lungi went to the Maliki, muajib for the tribe and *kharcha* [expenditure sum or pocket money] to the individual. In return, the tribesmen protected the security infrastructure in their area and assisted in maintenance of peace against raids and robberies in the settled districts.⁶⁴

The British Indian political administration always worked and interacted with the tribes through a pernicious system of middle-men. The Maliks or *Sardars*, middle-men lacked their own power when the *Sirkar* didn't support and thump their back. The Sarkar makes and unmakes these men, the role of Mulla and Malik have been institutionalized using the FCR keeping in view their respective sources of authority i.e. *Shariah* and *Rewayat*. The tribal Mulla and Malik derive their respective authority, power and prestige using their colonial and imperial connections granted as member of FCR *Jirga*.⁶⁵

On April 17, 1948, Quaid-e-Azam Muhammad Ali Jinnah, graced an all Tribal *Jirga* attended by two hundred tribal Maliks at Governor House, Peshawar, The Maliks put forward a strong request to the founding father of the nation and the first Governor General of Pakistan to place tribal area under the direct administration of the federal government. Hence, the Quaid to pay adequate surveillance to this request established the Ministry of States and Frontier Regions (SAFRON) and to meet their demand took its charge in person on July 6, 1948.⁶⁶

⁶¹ Sultan-i-Rome, *The North – West Frontier (Khyber Pakhtunkhwa) Essays on History*, Karachi: Oxford University Press, 2013, 50.

⁶² James Gordon Elliott, *The Frontier, 1839-1947: The Story of the North-West Frontier of India*. London: Cassel, 1968, 6.

⁶³ Mohammad Anwar Khan, *The Role of NWFP in the Freedom Struggle*. Punjab: Research society of Pakistan, 2001, 31.

⁶⁴ *Ibid.*, 35.

⁶⁵ Ayaz Mandokhel, interviewed by author, Peshawar, June 4, 2017. He is Additional Secretary, Home Department, Government of Khyber Pakhtunkhwa.

⁶⁶ Ministry of Information and Broadcasting Directorate of News and Publication, *Quadi-i-Azam Muhammad Ali Jinnah Speeches and Statesmen's as Governor General of Pakistan*

The Maliks and Lungi holders kept representing the local population and enjoyed their hereditary position. The right to vote was originally granted to Maliks alone enabling them to play formidable role in political and electoral affairs. disenfranchising tribal people and enlarging Maliks' role of intermediaries in the politics of patronage. Through an electoral college, they had the right to select representatives to national assembly mainly under the directives of their patrons in the political administration till the introduction of adult franchise in 1996.

An extended cooperation between the Maliks and Lungi holders allowed them to exploit the system for their own advantage. The 1973 Constitution provided eight National Assembly seats to FATA initially. Prior to the introduction of Adult franchise in FATA, a total of 35000 electoral votes were unevenly distributed. The tribal elders known as *speengiry*, *masharan* or *Maliks* in receipt of lungi allowance for their services from the political administration could cast votes.⁶⁷ The total of 35000 voters for Eight National Assembly seats i.e., an average of 4500 voters per seat, constituted an electoral college. These tribal elders or Maliks were in receipt of varied amount of lungi allowance depending upon social influence and reputation. The limited number of votes required to elect member of National Assembly led these Maliks to openly involve in political bargaining and vote-trading. Buying and selling vote became order of the day⁶⁸ making it an auction not election. These representatives elected by Maliks were mostly uneducated and paid little attention to the Maliks even, once elected as members of the National Assembly (MNAs). They denied even the small legal demands of the Maliks on the ground that during the election they had already paid Maliks for their votes.

The colonial British colonial administration neither took an interest in creating a system of service delivery in terms of education and health, nor economic and social development of the tribesmen viewing it 'unnecessary interference',⁶⁹ to be avoided. Pakistan inherited this situation, and merely renewed the existing treaties with the tribes, previously concluded with the British. Instead to win over hearts and minds of tribesmen and create a sense of ownership the new state of Pakistan preferred withdrawing its armed forces to use allegedly in Kashmir.⁷⁰ The *Khasadars*, acquired more

1947-1948, Islamabad: Ministry of Information and Broadcasting Directorate of News and Publication, 1989, 238.

⁶⁷ Currently the representation of FATA in the Parliament of Pakistan that 12 MNAs and 8 senators.

⁶⁸ Lawrence Ziring, *The Ayub Khan era: politics in Pakistan, 1958-1969*. New York: Syracuse University Press, 1971, 59.

⁶⁹ Sultan-i-Rome, *The North – West Frontier (Khyber Pakhtunkhwa) Essays on History*, Karachi: Oxford University Press, 2013, 357.

⁷⁰ When Jinnah became Governor General of Pakistan in 1947, he ordered the withdrawal of government forces from the tribal areas and pledged to respect the tribes' independence and preserve their allowances in return for their allegiance. Same year a lashkar of more than ten

responsibilities to assist political administration, and the scouts and militia, recruited and raised from amongst the tribesmen, of the army. No adequate service delivery or socio-economic uplift programme was even deliberated upon. Sanctioning a few schools and colleges, reservation of a limited number of admissions in professional/technical colleges and universities, limited financial assistance to a limited number of tribal students, fixing of quota in public sector services and opportunities to indulge in cross border/transit trade can be cited as concessions rather special privileges offered to the tribesmen over several decades. Limited political representation in the national parliament was granted with a restricted franchise. The right to vote was confined to Malik and lungi holders till extension of Peoples Representation Act 1976, allowing Adult franchise, in 1996.⁷¹ The Agency Councils, created in 2001, an admixture of elected and nominated members remained non-operational. With the passage of time, increased opportunities in trade, industry, business, commerce in the country and expatriate labour in the Middle and Far East, imperceptibly opened up a traditionally immobile society.⁷² New stake holders having surplus financial resources earned working hard inside/outside country coupled with those who earned money trading in Narcotics and arms in a perpetual war, aspiring power, have emerged. Political Agents are either not ready or willing or both to surrender power to representatives of clan/subtribe/tribe. Political privileges are enjoyed by hand-picked pro-government tribal Maliki, who fall in line when observe killing of Malik by extremists and terrorists. In fact, reform, infringement upon privileges is resisted by both Malik and the political administration. The Malik oppose changes to the FCR, however, the extension of Political Parties Act to FATA may pave the way for political and social climbing through the popular elections, especially, if Election to fill posts of local institutions of governance are introduced, and fairly and regularly held.

Conclusion

In theory, Malik and Lungi holders represented local tribesmen and played a role of a go-between the clan/subtribe/tribe and the political officer of the Crown. In reality, those who used their influence in loyalty to the Raj,

thousand tribesmen fought bravely in the Kashmir at the behest of the Muslim League-led government and in defense of Islam.

⁷¹ The pace of development aid to the tribal areas increased during the regime of Zulfikar Ali Bhutto whose populist message promised to override the authority of the Tribal Sardars, the Waderas, and the Maliks. Rumors swelled in 1977 that Bhutto had announced adult franchise for the tribal areas, an act that would have severely undermined the maliks' position. However, the rumors proved untrue, and the maliks maintained their exclusive and highly lucrative role as the conduits of development projects.

⁷² Izzat Awan, *Pattern of Administration in the Tribal Areas of Pakistan*, Peshawar: Printed Speenazar, 1972, 48.

were enlisted officially and paid allowances as well as added benefits, both in cash and kind. The source of this privileged position has been access to political officers and membership of Jirga that resolved disputes resulting into enhancing further their financial and social status. Lack of political, electoral representation of the tribesmen and a mechanism to recall an elder, in receipt of Maliki from Political Officer, resulted into the diminished role of the tribe and increased influence of Political Agent and Malik. In short, Malik, tribal elders' role of facilitator, mediator and arbitrator, gradually transformed into a British Agent, solely. Not only it led to marked stratification within the egalitarian tribal society but increased financial and decision making power of Malik, thus, served as source of increased antagonism and hatred within the tribe. The legitimacy of those Malik, conniving with the political administration began to erode, conversely, their assets, wealth, self-interest and influence increased beyond proportion. Failure of successor state, Pakistan, in bringing tribal areas under constitutional ambit, rather continued administering through colonial Political Agents and FCR led to a proliferation of Maliks on one hand and greater variation in their influence at the other. The system increasingly continued relying on the judgment of chiefly, the political agents, who colluding with Malik and lungi holders embezzled public money prospering both, however, the economy of FATA remained stagnant.

Though many dub this region 'autonomous', in practice, the authority of Political Agent (a non local) far exceeds that of his judicial and executive equivalents in the settled areas. Had the region been really autonomous, the tribal Malik, bereft of their hereditary exclusivity and patronage, would have retained more authority and control than they do today. The primary flaw in the system has arisen when co-opting traditional tribal leadership resulted into undermining the social dynamics essential to its legitimacy and effectiveness. The tribal system, corrupted by the activities of the political agents, became less responsive and workable eventually making, tribal Malik hereditary rights holder, antithetical to the ideals of egalitarian Pakhtunwali.

Increased, both inland and outland, migration,⁷³ coupled with remittances sent to families from Middle East or national cosmopolitan/industrial hubs, such as Karachi/Islamabad/Lahore gave birth to new social classes. Allocation by political administration of migrant work opportunities reserved most lucrative jobs for the Malik. Almost every Malik had a male relative from the extended family working abroad. Arrival of new stake holders including gun and drug barons and quest/contest of power has challenged the myth of autonomous governance in FATA. It exposed that real power lies not with elected representatives, Malik or residents of

⁷³ In South Waziristan alone, 1979, 20,000 - 30,000 men moved to the settled areas, to other urban centers such as the port city of Karachi and to the Gulf States to earn income.

FATA but with political administration, after 9/11, with militants and military. Answer to efforts of both militants and military to monopolizing power in the name of autonomous governance is not restoration of the status and influence of unelected Malik and Political administration but introduction of election to local government institutions and making them accountable to tribesmen and women.

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FOREIGN POLICY OF PAKISTAN AFTER 9/11 CONCERNING U.S. & ITS OMINOUS PITFALLS FOR FEDERALLY ADMINISTERED TRIBAL AREAS (FATA)

Naqeebullah Kakar and Nazir Ahmed Kasi***

Abstract

Since its inception on the map of the world, Pakistan's Foreign policy has been facing grim challenges. Undeniably, the challenges of the 21st century have imperilled Pakistani state and its foreign policy. Specifically, in an international context; the event of 9/11 and its aftermath; globalization; international terrorism; drone strikes in FATA and in domestic context; extremism and economic decline have added to the ineffectiveness of foreign policy. Pakistan has been projected by the international community and the media to be the hub of terrorism. This research paper will unfold the foreign policy of Pakistan, certain characteristics that imperil various aspects of it and specifically the foreign policy of Pakistan in the 21st century with regard to the U.S. after the twin towers event in 2001 and its ominous pitfalls for the federally administrated tribal areas (FATA) of Pakistan. Finally, it will provide with doable options for tailoring sustained, efficacious and progressive foreign policy of Pakistan in regional and international context.

Keywords: Pakistan, Foreign Policy, FATA, 9/11, 2001, War on Terror.

Introduction

Foreign policy is the practice of political influence to persuade other states to put into effect their legislative authority in a modus operandi as craved by the state concerned.¹ In the contemporary anarchical international system, the only component that matters, is the foreign policy of a state

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¹ Northedge, F.S. *The Foreign Policies*. London; Faber and Faber, 1968, 6-7.

because it is the face that a nation-state wears to the outer world, which, in turn, is the sum total of the principles, the interests and objectives duly articulated while conducting its relations with other states. Since its inception on the map of the world, Pakistan's foreign policy in one way or the other has been highly inclined to the relations with the United States of America. Pakistan has remained, precisely, in the rein of the United States, because of her fear from Eastern neighbour, India, neologised as 'Indian fear' or 'existential threat'.² To address the issue of survival, Pakistan joined hands with the West and United States, specifically after the historical visit of first prime minister of Pakistan, Liaquat Ali Khan to the U.S. in 1950.³

Worth-mentioning, Pakistan signed defensive treaties subsequent to United States' directions, likewise, South East Asia Treaty Organization (SEATO) in 1954 and the Central Treaty Organization (CENTO)—formerly known as 'Baghdad pact' in 1955 and the ample manifestation is the logistic support to West during Korean War.⁴ After the U-2 spy plane incident in 1960, Pakistan, somehow, tried to formulate independent foreign policy but the debacle of 1971 didn't let her succeed, hence Pakistan again aligned with West. These 'On and Off' relations with U.S. couldn't help Pakistan compete her arch-foe—India. The most critical period in Pakistan's foreign policy began in the aftermath of assault on the United States' emblem; Twin Towers fortress in New York and Washington on Tuesday, September 11, 2001. Moreover, the U.S. administration, via Richard Armitage—Deputy Secretary of State, threatened Pakistan to be an ally of the U.S. against the so-called 'War on Terror', or else, be ready to be bombed and be prepared to go back to the stone age.⁵

Unfortunately, a uniformed military dictator ruled over Pakistan then who wished to legitimise his illegitimate ruling, hence unilaterally decided to join the U.S. against her war on terror and provided bases, passage, and logistic support against the erstwhile neighbouring important strategic territory (NIST)—Afghanistan.⁶ The government of Pakistan didn't analyse the cost-benefit repercussions of alignment with the West and United States in its entirety. Equally important, historical evidences explicitly reveal that in 1980s, Pakistan was the bastion of the international community to pull out Russia out of Afghanistan, but in the wake of 21st century, she turned out to be a part of the invasion of a territory—Afghanistan, for the liberation of

² Yasmeen, S. Pakistan's cautious foreign policy. *Survival*, 36(2), 1994, 115-133.

³ Goswami, A. *3-D Deceit, Duplicity & Dissimulation of US Foreign Policy Towards India, Pakistan & Afghanistan*. Author House, 2012, 79.

⁴ Arnett, E. H. *Military Capacity and the Risk of War: China, India, Pakistan, and Iran*. Oxford University Press on Demand, 1997, 150.

⁵ Musharraf, P. *"In the line of Fire: A Memoir"*. Free press, New York, United States, 2006.

⁶ Fair, C. C., & Watson, S. J. (Eds.). *Pakistan's Enduring Challenges*. University of Pennsylvania Press, 2015.

which she fought a powerful nation of the world in the 1980s. The federally administrated tribal areas (FATA) were the training camps of Jihadis who were trained, supported and funded by the West with the approval of Pakistan to fight against the Russian invasion of Afghanistan in 1980s.⁷

The long mountainous terrain of FATA adjacent to Pak-Afghan border was treated as a laboratory where-of militants were stationed, funded, trained, encamped and made them fight as a proxy in Afghanistan.⁸ It is pertinent to mention here that FATA even in those heydays could not witness progress, social mobility, educational facilities, hospitals, sound infrastructure, basic and fundamental human rights, and equal citizenship rights as enjoyed by the other citizens of provinces, rather it was exploited by the stationing of foreign fighters and militants, Kalashnikov culture was nurtured, bomb and explosives magazines were created and it was projected to the outside world as an epicenter, hub and bastion of militants.⁹ In the wake of new alliance with U.S. and grant of title of major non-NATO ally to Pakistan, FATA was again considered to be the focal point in the war against terror because U.S. deliberated that Al-Qaeda militants were hiding there who were considered a potential threat to U.S. security.

Pakistan's foreign policy after 9/11 brought home and specifically to FATA nothing but violation of Pakistan's sovereignty; set back to Kashmir cause because United States didn't discriminate between struggle for self determination and terrorism¹⁰; drone attacks; several military operations; destruction of socio-cultural fabric; issues of Internally Displaced Persons (IDPs); socio-economic deprivation; destruction of agricultural sector; and devastation of infrastructure etc. Before the incident of 9/11, Pakistan faced U.S. economic and military sanctions such as Pressler, Glenn and Symington amendments aimed against Pakistan, but all this was washed from Pakistan's memory in the wake of war on terror led by U.S.¹¹

Characteristics of Pakistan Foreign Policy

Ever since times memorial, and its inception on the map of earth over the pretext of Islamic ideology, Pakistan's foreign policy had revolved around in quartet manifestations such as, neutralism—1947-50; alignment

⁷ Sial, B. *Pakistan's role and strategic priorities in Afghanistan since 1980*. Norwegian Peace building Resource Centre, 2013, 2.

⁸ Ibid.

⁹ Hussain, T. *FATA: Terrorists or victims of a covert war?*, 2016. Retrieved from Al-Jazeera: <http://www.aljazeera.com/indepth/opinion/2016/09/fata-terrorists-victims-covert-war-160912084500746.html>, accessed on January 20, 2017.

¹⁰ Akhtar, S. *War on Terrorism and Kashmir issue*. Islamabad: Institute of Regional Studies (IRS), 2010.

¹¹ Collins, L. *United States diplomacy with Pakistan following 9/11. A case study*. 2009.

with West—1950-62¹²; search for alternatives; formulation of Independent and interest oriented foreign policy; and finally, alignment with West again—2001. After independence Pakistan was confronted with Indian aggression which was perceived as ‘Indian fear’ and an existential threat. To address this issue, the newly born state aligned with West for defensive, strategic, diplomatic and economic gains. Having aligned with west for more than a decade, and after an adverse development—whereby, a U-2 spy plane was shot by Russia which flew from Pakistani territory, Pakistan changed the external policy and tried to search for alternatives.¹³ In this phase, Pakistan resolved outstanding territorial disputes with China and ample manifestation are bilateralism; neutralism; the hosting of OIC summit in 1974; and detente of United States with China was a hall mark of this phase. The third phase began after the invasion of Afghanistan by Russia and yet again Pakistan aligned with West and United States.¹⁴ This very stage brought with it disastrous repercussions in the morph of millions of refugees, arms and ammunitions, breeding the militants in FATA, and a proxy war in Afghanistan.¹⁵ Finally, after the disintegration of USSR in 1990s Pakistan tried to put into effect independent foreign policies because in this very phase Pakistan withstood the mounting pressure regarding atomic programme and nuclear proliferation, and recognition of Taliban’s government.

Foreign Policy of Pakistan After 9/11

Unequivocally, Pakistan’s Foreign policy has highly been inclined towards United States in particular. In the wake of 9/11, 2001 and the subsequent developments, United States president came up with hawkish designs against the third world country i.e. Afghanistan and demanded extradition of Osama bin Laden on the charges levelled against him regarding the twin tower attacks. This was the first time in its history that United Nations passed a resolution and practically got involved in a foreign invasion under the aegis of United States and in the guise of UNAMA (United Nations Assistance Mission in Afghanistan). Before this assault, Pakistan was threatened to be thrown back to the Stone Ages if it didn’t

¹² Pande, A. *Explaining Pakistan’s foreign policy: escaping India*. Taylor & Francis, 2011, 138.

¹³ Azam, I. *Pakistan and the Asian Collective Security System*. Matboat-e-Hurmat, 1983, 52.

¹⁴ Farooq, N. T. *US-Pakistan Relations: Pakistan’s Strategic Choices in the 1990s*. Routledge, 2016, 3.

¹⁵ Ahmad, A. *The Afghan Policy*. 2011, October 28. Retrieved from Pakistan Today: <https://www.pakistantoday.com.pk/2011/10/28/the-afghan-policy/>. Accessed on February 27, 2017.

succour U.S. invasion of Afghanistan.¹⁶ The irony doesn't end here, Pakistan became the practical demonstration of U.S. bastion against the erstwhile neighbouring Muslim country, perhaps, perceived as ***"Neighbouring important strategic territory (NIST)"***. The past tripartite decade long foreign policy could be comprehended in three phases.

Compatibility in Relations and Complementary Objectives 2001-06

Foreign policy of Pakistan since 1947 has been defensive in form and nature owing to the Indian factor, termed as Indian fear and policy had been neologized as India-centric. Equally important, 21st century witnessed a thrilling development in Indian foreign policy known as India's neighbourhood policy aimed at developing peaceful relations with all neighbouring countries so that she may supplement her bid for United Nations Security Council membership. This policy stemmed from the Vajpayee's statement, *'you can change your friends but not neighbours'*.¹⁷ In the wake of 9/11, and with apprehensions from India for she would support U.S. against war on terror unconditionally, nonetheless, United States pressure, Pakistan took a U-turn and decided to side-line with the emerging idea of war on terror.

From 2001 till 2006 India badly failed to formulate cordial relations with neighbouring countries.¹⁸ Hence, she came up with blame game against Pakistan by blotting the image of Pakistan on international level. Moreover, India's 21st century foreign policy believed in the internationalization of South Asia because of her bid for UNSC. In this phase, in order to contain Indian adventurism, Pakistan became active member of Coffee Club. Pak-U.S. relations from 2001 till 2006 were compatible and objectives were complementary. Approach and policy towards war on terror were alike. Pakistan under U.S. pressure launched major military operations in Waziristan in, 2002, 2004 and 2006. However, Pakistan's sovereignty was put on stake by the drone attacks that began in 2004. The earmark of this phase was the status of "Non-NATO-ally" granted to Pakistan by U.S. and West.

¹⁶ Musharraf, P. *"In the line of Fire: A Memoir"*. Free press, New York, United States, 2006.

¹⁷ Vajpayee, A.B. *You Can Change Friends, Not Neighbours*. 2003, May 09. Retrieved from: http://articles.economictimes.indiatimes.com/2003-05-09/news/27547221_1_india-and-pakistanjammu-and-kashmir-lahore-declaration, accessed on July 26, 2016.

¹⁸ Behuria, Ashok K., Smruti S., Pattanaik., and Gupta. Does India Have a Neighbourhood Policy? *Strategic analysis* 36, no.2, 2012: 229-246.

Compatibility in Interests but Different Policies From 2006-10

The relations between Pakistan and U.S. from 2006 till 2010 beheld bizarre developments. Though the objective of eliminating terrorism was complementary but shift in objectives was quite distanced. United States wished to eliminate terrorism once for all, but Pakistan opted for the policy of appeasement and dialogue mechanism because it had witnessed ground realities after the 2004 and 2006 military operations in Waziristan. Pakistan carried out systematic dialogue with extremist groups Vis the Shakai peace agreement 2004; Sararogha agreement 2005; Miranshah peace accord 2006, Swat-I and Swat-II 2008; Khyber agreement with Mangal Bagh etc. In order to build pressure on Pakistan to change her policy on terrorism, in 2006 and 2008 U.S. signed 123 agreements with India, worth-mentioning was the civil-nuclear deal between U.S. and India. Not only this, but U.S. approach in this phase side-lined Pakistan in the domain of her South Asian policy. The South Asian Pivot by U.S. regarding Pakistan, specifically the prosperity idea with Pakistan was completely antithetical because U.S. didn't opt for active direct involvement, collaboration and trade etc. nonetheless, U.S. put forward a meagre assistance package and marginalized Pakistan. Unlike Bangladesh and India, security context in South-Asia was supplemented by Af-Pak policy to deal with Pakistan and Afghanistan as a single geographical unit.¹⁹

Peak of Irritants between Pakistan and U.S. From 2011 Todate

This phase of foreign policy quite resembled 1990s foreign policy because instead of considering for alternatives Pakistan tried to formulate independent policies irrespective of external pressures. 2011 was the peak of irritants between Pakistan and U.S. Manifest instances were the Raymond Davis episode; unilateral OBL operation in Abbottabad; Salala check post viciousness etc. Pakistan response to these untoward developments was the ban on NATO supply and non-participation in Bonn conference. Thereafter, the Chief of Army Staff General Ashfaq Parvez Kiani visited Russia in 2012 and signed arm deal resulting in softening of relations. Pakistan kept herself in this phase isolated from Middle Eastern crisis and acted smartly. Had Pakistan interfered in Iraq and Syrian crises, sectarian bloodshed would have been witnessed. In this very phase, Pakistan developed strong relations with European Union and got GSP plus status. Worth-mentioning, the \$46 billion projects with China were signed neologised as 'China Pakistan Economic Corridor'.

¹⁹ Mitton, J. *Regional Realities: The India-Pakistan Enduring Rivalry as an Obstacle to Success in Afghanistan*. Library and Archives Canada= Bibliothèque et Archives Canada, 2011.

War on Terror and its Ominous Pitfalls on FATA Residents: Military Operations in FATA

Quite contrary and antagonistic to the perceived principle of loss and injury: Pakistan which has not been in direct conflict with U.S. or other powers, yet, suffered more than 60,000 casualties and more than \$188 billion economic losses because of the foreign policy dimension towards U.S. against her so-called war on terror.²⁰ After Iraq and Afghanistan, Pakistan is the only country that got more damage in the American war on terror.²¹ Pakistan became a battle ground of U.S. war on terror and critics termed this alliance as 'war of terror' because of its ominous pitfalls for the government in general and the masses in particular. Pakistan army conducted many major and smaller military operations in FATA since 2001 to eradicate militancy under duress. These included, but no limited to:

- Operation Al-Mizan (2002-2006)
- Operation Rah-Haq (November 2007)
- Operation Sher-e-Dil (September 2008)
- Operation Zalzala (2008-2009)
- Operation Sirat-e-Mustaqeem (2008)
- Operation Rah-e-Rast (May 2009)
- Operation Rah-e-Nijaat (October 2009)
- Operation Koh-e-Sufaid (July 2011)
- Operation Zarb-e-Azb (2013)
- Operation Radd-ul-Fasaad (2017)

The captioned military offences resulted into abundant number of displaced persons, especially, at the height of the conflict in 2009, some 3 million people suffered and turned out to be IDPs.²² As a result of these operations and terrorist activities carried out by various outfits of militants, 61927 casualties have taken place including military personnel, militants and civilians.²³ Though, these operations were aimed at eliminating terrorist camps and targeting Al-Qaeda leaders and to some extent Pakistani forces arrested key leaders such as Abu Zubaydah, Ramzi bin al-Shibh and Sharib

²⁰ Ishaq Dar. Pakistan suffered loss of \$188bn during war on terror. *Daily Dawn*. Retrieved from Dawn: <https://www.dawn.com/news/1262750>. Accessed on January 04, 2017.

²¹ Baloch, J. A. The implications of war on terror on Pakistan. *African Journal of Social Sciences*, 2(2), 2012: 23-33.

²² Hussain, T. *FATA: Terrorists or victims of a covert war?* 2016. Retrieved from Al-Jazeera: <http://www.aljazeera.com/indepth/opinion/2016/09/fata-terrorists-victims-covert-war-160912084500746.html>. accessed on February 20, 2017.

²³ SATP. *Fatalities in Terrorist Violence in Pakistan 2003-2017*. 2017. Retrieved from: <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>. Accessed on April 2, 2017.

Ahmad.²⁴ According to media, the Pakistani security forces demolished over 4,000 houses in South Waziristan in January, 2007 and the operation Zalzalā (Earthquake) displaced around 200,000 local residents resulting in bitter hostility.²⁵ Another adverse of these operations in the social domain was the deprivation of boys and girls from the basic right of education. The terrorist attacks and counter-terrorism strategies in FATA have severely hampered the educational standard which was hitherto lowest in literacy rate.

Fatalities in FATA: 2006-2017

Years	Civilians	SFs	Terrorists	Total
2003	140	24	25	189
2004	435	184	244	863
2005	430	81	137	648
2006	608	325	538	1471
2007	1522	597	1479	3598
2008	2155	654	3906	6715
2009	2324	991	8389	11704
2010	1796	469	5170	7435
2011	2738	765	2800	6303
2012	3007	732	2472	6211
2013	3001	676	1702	5379
2014	1781	533	3182	5496
2015	940	339	2403	3682
2016	612	293	898	1803
2017	178	51	201	430
Total*	21667	6714	33546	61927

Data till April 2, 2017

Source: SATP. (2017). Fatalities in Terrorist Violence in Pakistan 2003-2017.

Retrieved from:

<http://www.satp.org/satporgrtp/countries/pakistan/database/casualties.htm>; accessed on April 2, 2017.

Drone Attacks in FATA

Apart from death and physical injury, the drone strikes, precisely known as unmanned aerial strikes or targeted killings via drones, that began in 2004, have caused considerable harm to the daily lives of ordinary citizens of

²⁴ Abbas, Z. Operation Eye wash. *Herald*, 2005, 64.

²⁵ Ali, Z. Over 4,000 Houses Destroyed in Waziristan Operation. *Daily Dawn*, 2008. Retrieved from <https://www.dawn.com/news/971551/over-4-000-houses-destroyed-in-waziristan-operation-report> accessed on February 21, 2017.

FATA.²⁶ These planes hover 24/7 in the atmosphere of frontier regions specifically bordering Afghanistan and had caused panic, stress, anxiety, traumatic repercussions, depression, physical and mental injuries to the innocent masses without discrimination. United States began this targeted killing to hit the Al-Qaeda militants who were supposed to have hid themselves in the region of FATA. Quite antithetically, neither the U.S. nor the international community had analysed the cost-benefit results of drone campaign which had resulted into the death of hundreds of thousands innocent lives. Though, the United States against the ground realities and antagonistic to the International norms implicitly lie that high-valued-targets have been killed as a result of drone strikes, but the high-level targets' percentage out of total casualties is extremely low—assessed to be only 2%.²⁷ The United States began all this after having passed a resolution coded as 'Authorization to Use Military Force' (AUMF) against people, organizations and countries as potential threat to U.S.²⁸ The United States has explicitly violated the United Nations charter article 51—because United States has violated Pakistan's sovereignty and Pakistan has not been in active conflict with United States.²⁹ Anti-drone activist, Benjamin writes, that United States' Presidents now act as Judge, juror and executioner: all-in-one, by executing drone targeted killings, that is a de-facto license to kill anyone without checks and balances.³⁰

The drone strikes in Pakistan are a clear-cut violation of Pakistan's sovereignty and against the norms of International Law and Human rights because these had resulted into a collateral damage and constitute war crimes. Women, children and aged people have been killed as a result of these targeted killings. Not only this but drone program had resulted into permanent psychological diseases, such as trauma, anxiety, depression etc. The innocent residents of FATA had been severely affected by the drone strikes, constant military operations, bomb blasts, militant attacks, suicide bombings, anarchy, and lawlessness.

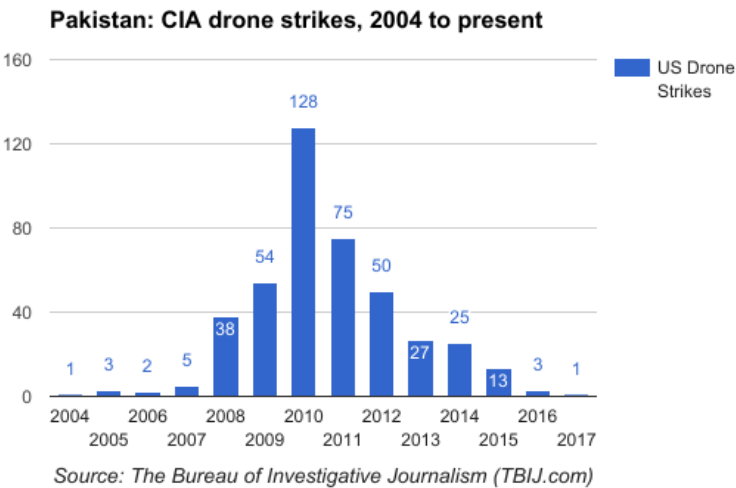
²⁶ Cavallaro, J., Sonnenberg, S., & Knuckey, S. Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan. *International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law*, 2012: 1-165.

²⁷ Bergen, P., & Braun, M. *Drone is Obama's Weapon of Choice*. Retrieved from CNN, 2012, September 6. Retrieved from <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone/index.html>, accessed on January 10, 2017.

²⁸ Yousaf, F., Rahmanullah. *Drone Strikes in FATA, a violation of Pakistan sovereignty*, 2014, June 23. Retrieved from FATA Research centre; <http://frc.org.pk/wp-content/uploads/2014/11/7.pdf>, accessed on 12-02-17.

²⁹ O'Connell, M.E. *Drones under International law*. Washington University Law, 2010. Retrieved from <http://law.wustl.edu/harris/documents/OConnellFullRemarksNov23.pdf>, accessed on January 10, 2017.

³⁰ Benjamin, M. *Drone Warfare, killing by remote control*: New York and London: OR Books, 2012.



Year	US Drone Strikes	Minimum people killed	Maximum people killed	Minimum civilians killed	Maximum civilians killed	Minimum children killed	Maximum children killed	Minimum people injured	Maximum people injured
2004	1	6	8	2	2	2	2	1	1
2005	3	16	16	5	11	4	5	1	1
2006	2	94	105	90	100	73	76	3	3
2007	5	36	56	11	46	1	1	20	37
2008	38	252	401	59	173	26	45	146	228
2009	54	471	753	100	210	36	39	266	404
2010	128	755	1,108	89	197	23	23	351	428
2011	75	362	666	52	152	6	11	158	236
2012	50	212	410	13	63	1	2	100	212
2013	27	109	195	0	4	0	1	43	89
2014	25	115	186	0	2	0	2	44	67
2015	13	60	85	2	5	0	0	25	32
2016	3	11	12	1	1	0	0	3	6
2017	0	0	0	0	0	0	0	0	0
TOTAL	424	2,499	4,001	424	966	172	207	1,161	1,744

Source: TBIJ. (2017, January 13). CIA and US military drone strikes in Pakistan, 2004 to present. Retrieved from TBIJ: <https://docs.google.com/spreadsheets/d/1NAfjFonM-Tn7fziqiv33HlGt09wgLZDSCP-BQaux51w/edit#gid=694046452>



Source: Tribal News Network. (2016, May 24). Tribesmen from Miranshah Ask Government To Rebuild Their Damaged Houses. Retrieved from TNN: <http://www.radiotnn.com/tribesmen-from-miranshah-ask-government-to-rebuild-their-damaged-houses/>. Accessed on February 23, 2017.



Source: Rizvi, M. (2013, October 24). Silent victims of Drone Attacks. Retrieved from ARY News <https://blogs.arynews.tv/silent-victims-of-drone-attacks/>. Accessed on February 20, 2017.



Source: Murad, A. (2012, October 4). Drones: A Price Worth Paying?
 Retrieved from RedWishDotCom: <http://redwishdotcom.wordpress.com/drones-a-price-worth-paying>.
 Accessed on February 20, 2017.

Implications on Psyche

There is no denying the fact that conflict has left behind deep psychological impacts on the Pakistani society in general and the people of FATA in particular. The fear, perhaps, permanent psychological in nature bread in the minds of FATA residents owing to the sound of shelling, cannons, bomb blasts, suicidal attacks and hovering of drones upside, especially, the women and children suffered to the level of trauma. Though, residents of FATA had not been involved in 9/11 attacks directly or indirectly, yet they suffered the most from the so-called war on terror which resulted into a permanent nightmare. Depression, anxiety, fear, tense atmosphere, helplessness, insecurity and stress had all been the symptoms amongst women, children, youth and aged alike. According to a rough calculation by the president of Pakistan psychiatry society, more than 54% of FATA residents have suffered from acute stress, post traumatic situation, fear, sleep disturbance, loss of appetite, and panic.³¹ In actuality, this all resulted owing to entanglement between tripartite armed men: Taliban on one side, Pakistani military on the other and the unmanned drones upside.

³¹ Mufti, D. K. *Interview of Dr. Khalid Mufti, the Ex-President of Pakistan Psychiatric Society, 2012*. Retrieved from: <http://www.earthtimes.org/articles/show/295028,suicide-bombings-causetortmentfor-pakistani-children--feature.html>, accessed on February 15, 2017.

Unthinkable Repercussions on Agricultural Productivity

Apart from the social, economic, political and physical implications, one of the unthinkable offshoots of war on terror concerning FATA has been the destruction of agricultural productivity. This war not only destroyed agriculture but also left behind lowest per capital income of the peasants, farmers and those related to this field directly or indirectly. The case study of Malakand in general and Bajaur agency in particular explicitly depicts that the agricultural products and crops were destroyed severely. Additionally, people lost their properties, destruction of fields resulting into low income.³² The frequent operations, bombings, and militancy in the areas made the people displaced from their origin hence they could not focus their agricultural land. This episode added to the miseries of the residents of FATA who were already war trodden. However, the direct repercussion of unrest affected farmers, reduced the supply and the quality of materials, ill functioning of market, and inflation etc.³³

Conclusion

To sum up, it could aptly be stated that Pakistan's foreign policy has been highly inclined towards the relations with United States irrespective of neighbouring countries. The major obstacle had been the formation of independent foreign policy and its implementation by the respective governments. By having a bird eye view, it can easily be inferred that military have had substantial role in determining the foreign policy of Pakistan because of Indian threat perception, known as 'Indian fear'; strained relations with U.S. and lack of political leadership in the country. There is no denying the fact that owing to economic dependence we have been dictated by the super powers for their nefarious agendas and goals. The ample proposition to the fact is that in Pakistan Peoples Party's government from 2008-2013, abolished the subsidy on electricity under the influence of International Monetary Fund (I.M.F) and World Bank. All in all, the obstacles, pitfalls and perils can be addressed as a result of independent, efficacious, self-centred foreign policy which is being determined by the cherished goals of Pakistan.

This policy had proved to be a downright fiasco, because Pakistan had lost \$182 billion in economic perspective and more than 60,000 lives of military personnel and civilians. The worst war ridden society had been that of FATA which was used as a laboratory in 1980s to fight the Communism

³² Naz, D. A., Khan, D.Q., Khan, Tariq., Shah, D.I., Khan, D. F., Khan, N. . The Impact of Violent Conflict on the Agricultural Economy of FATA: A Case Study of Bajaur Agency Khyber Pakhtunkhwa. *Journal of Applied Environmental and Biological Sciences*, 6(9), 2016: 31-37.

³³ Ibid.

and in the wake of 21st century it again became a place of permanent military operations by Pakistan and drone strikes by the United States. It is high time that Pakistan had resorted to certain realistic propositions that could address the lingering issues, perhaps, imbroglios to get rid of terrorism, extremism and U.S. led war on terror. Pakistan shall bring to front a narrative and disseminate that to international community and thereafter persuade them that compensation must be given to the people of FATA who suffered in U.S. war against terror; drone strikes must not be carried out at any cost because of its negative offshoots; honourable solution to Kashmir issue shall be extended at an earliest; safeguarding Pakistan against any Indian aggression; writing off Pakistan's loans; restoring the prestige of state and nation etc. and on national front, the issue of IDPs must be resolved immediately; reforms in FATA shall be carried out within a span of 1 year by extending the basic human rights to all citizens of FATA; putting an end to the Frontier crimes regulation (FCR); building of infrastructure; schools and hospitals in FATA; effective dialogue with the militant outfits to resolve the issue peacefully.

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REFLECTIONS ON AFGHANISTAN'S LOWER HOUSE (ULASI JIRGA) PARLIAMENTARY ELECTIONS 2010

Mohammad Shafi and Noor Ul Amin***

Abstract

This paper focuses on Ulasijirga elections of Afghanistan held in September 2010. Main objective of the paper is to analyze the elections; highlight the modern electoral political working in Afghanistan; the role of various factors such as; the political ideology, the political parties, the role of warlords; and the nature of election campaign in the elections. The paper will provide an insight into the electoral politics of Afghanistan. It has been organized into two parts; Part 1, highlights pre-poll uncertainties, expressed by the observers of election, the concern for transparency of electoral process, threats of insurgents, and manipulation of warlords. This part also highlights the elections campaigns took place despite the warnings and fears. Part II covers the post-poll scenario, the human toll it took, the frauds reported and the way these issues were interpreted and addressed leading to differences between the Independent Election Commission and the pro-President's attorney general office. Finally, it will further highlight reflections made out of this study.

Keywords: Elections in Afghanistan, Afghan Election Commission, Political parties, Ulasijirga, Warlordism

Introduction

The introduction of modern popular democratic elections in the West, ended once for all, the palace conspiracies occurred following death of monarch. While, in the East, especially amongst the Muslim states, with few exceptions, the modern elections are yet to be introduced. Its absence in Muslim states certainly is a potential source of political destabilization and

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national embarrassment. Modern democratic political elections are considered as an essential mechanism for peaceful transfer of political power.¹ Thus, modern democratic electoral politics is a significant tool for every modern nation-state including Afghanistan.

Historically, one important reason for Afghanistan's internal political conflicts has been failure of the kingdom to formulate a peaceful tool of transfer of power. This is reflected in internecine wars for throne between the princes, the tribes such as, the Abdalis versus Barakzais, in the decades of 18th and early 19th centuries, costing Afghan kingdom financially and territorially.² This phenomenon raised its head in the beginning of 20th century between a small educated reformists' class called *Mushroota Khwahan* (constitutionalists) and Amir Habibullah Khan (r.1901-1919). The reformists' demands for a constitutional government with an accountable ruler elected by election, were ruthlessly suppressed in 1909 by the Afghan Amir, Habibullah. After a decade, following the footsteps of their predecessors, the constitutionalists regrouped themselves as Young Afghans, killing the monarch in 1919, bringing a new government under king Amanullah (r.1919-1929).³

However, the pro-reform regime of king Amanullah (r.1919-1929), was dethroned due to opposition of clergy and tribes with assistance of British Indian government. The new government of Nadir Khan (r.1929-1933), suppressed the reformists. A new constitution framed in 1931 allowed legal opposition and legal political parties.⁴ Elections were regularly held but pro-government tribal members and clergy was facilitated and even many re-elected during these elections, held every third year.⁵

For the first time, Shah Mehmud Khan pronounced independent elections in 1949 for 7th *Wolesi Jirga*⁶ (Lower House) that brought a

¹ Louis Dupree, *Afghanistan*. New Jersey: Princeton University Press, 1980, 47.

² Hassan Kakar, *Afghanistan: A Study in International Political Developments*. Lahore: Punjab Educational, press, 1971, 55.

³ Abdul Ghani, *A Brief of Political History of Afghanistan*. Lahore: Maktaba-e-aliya, 1989, 90

⁴ A Collection of Area Study Center, University of Peshawar. *Development of Political Parties in Afghanistan*, 8.

⁵ Dupree Louis. *Comparative Profiles of Recent Parliaments in Afghanistan: Emphasis on Twelfth and Thirteenth*. South Asia Series: Vol.XV No. 4, The American Universities Field Staff: Afghanistan, 1971.

⁶ *Wolesi Jirga* is the lower house of the bicameral National Assembly of Afghanistan, alongside the House of Elders. The House of the People is the chamber that bears the greater burden of lawmaking in the country, as with the House of Commons in the Westminster model. It consists of 249 delegates directly elected by single non-transferable vote (SNTV). Members are elected by district and serve for five years. The constitution guarantees at least 64 delegates to be female. Kuchi nomads elect 10 representatives through a Single National Constituency. The House of the People has the primary responsibility for making and ratifying laws and approving the actions of the president. The first elections in decades were held only in September 2005, four years after the fall of the Muslim fundamentalist Taliban regime, still under international (mainly UN and NATO) supervision. The 2010 *Wolesi Jirga* elections were held on September 18, 2010.

parliament dominated by liberal-reformists members. However, after expiry of three years tenure in 1951, the next election held in 1952, was rigged and popular leaders were disqualified to contest election. The anti-government leaders and reformists were once again suppressed, deported and imprisoned.⁷ The next decade under Daud Khan witnessed no elections. While elections were held in 1965 and 1969 for *Ulsi Jirga*, on non-party basis, resulting into a parliament with majority members' illiterate and religious. Similarly, the Upper House (*Masharano Jirga*), a source of legitimacy to a ruler, was drawn mainly from pro-government tribal leaders and religious elements, to support the ruling elite.

The lack of democratic culture in Afghanistan caused the Saur Revolution to occur in 1978.⁸ Then, during the socialist rule (1978-1992) under the constitution the internal peace and order could not be achieved due to squabbles inside the PDPA ruling party and external interference. Following that anarchy, the political chaos brought Taliban in 1994 in Kandhar and later on in Kabul in September 1996, which ensued democratic disorder. The fall of Taliban from power on October 7, 2001, brought a new constitution framed in 2004.⁹ The new constitution proposed a bicameral legislature, comprising a nominated *Mashrano Jirga* (upper house of parliament) and an elected *Ulsi Jirga* (lower house of parliament)¹⁰. Under the new constitution, first elections for *Ulsi Jirga* were held in 2005 following the second in 2010.

PART I

The Part One of this paper highlights pre-poll reservations, expressed by the observers of election, such as, concern for transparency of electoral process, threats of insurgents, and election of warlords.

1. Transparency

Foreign as well as local observers witnessed the major issue of Transparency of the electoral process. Practices such as, buying of votes, ballot stuffing, and co-opting of election officials, were predicted. These concerns emerged due to presidential election of 2009 during which ballot stuffing and voter intimidation were observed.¹¹ Despite assurances from

⁷ Muhammad Tauqir Alam, *The Betrayal Of Afghanistan*. Area Study Center, University of Peshawar, 2008, 44.

⁸ Sher Zaman Taizi, *Saur Revolution*. Ph.D thesis, Area Study Center, University of Peshawar, 1998, 28.

⁹ *Friday Times*, Islamabad, November, 19, 2010, 16.

¹⁰ *Daily Dawn*, Islamabad, 18th November, 2004, 12.

¹¹ Retrieved from Euro News (<http://www.euronews.net/2009/08/22/eu-observers-cry-foul-over-afghan-elections/>). Accessed on August 03, 2010.

electoral authorities, western diplomatic sources at Kabul expressed doubt about transparency. Their concern was that President Karzai might be interested in a more compliant parliament for which he will resort to intimidation and fraud. Secondly, they quoted that Afghanistan's security situation was worse than the previous presidential poll; hence the possibility of fraud was greater this time.¹² However, Zekria Barakzai, Deputy Chief of IEC (Independent Election Commission), predicted less fraud in the election admitting that in the last election sensitive material regarding the contest got out of our control. This time around, he further said, we are more experienced and qualified for better show despite the fact that both the task and the situation are difficult.¹³

Moreover, despite all the fears a section of society was of the view that the democratic process of election, though flawed, is much better than no election. Afghanistan a dominantly tribal society and lacking modern democratic traditions of popular elections had this opportunity of conduct of free and fair elections was enough for a certain section of people even if not perfect.

2. Insurgent's Threat

Some 2502 candidates were contesting for 249 seats of *Ualsi Jirga*. However, unlike the Presidential Election in 2009, the threat level was high and real from insurgents this time.¹⁴ As soon as election campaign started three parliamentary candidates, from Ghazni, Khost and Herat, were killed and many other became victims of failed attempts on their lives.¹⁵ Taliban's spokesman, Zabihullah Mujahid held those killed were convicted by Taliban's court and their death was a message to other candidates to leave the election or suffer the same fate.¹⁶ In the Nangarhar province, Taliban approached every house to threaten the people of harsh consequences like cutting off right hand if anybody was found having voter registration card. Taliban leadership argued elections didn't carry any validity for them as their spearhead Mullah Omar had already announced boycott of the very process.¹⁷

¹² MARIA ABI-HABIB. Afghan Vote Spurs Fears of Violence, Retrieved from http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748703723504575425362554596190.html. Accessed on August 17, 2010.

¹³ Rawa News, Retrieved from, <http://www.rawa.org/temp/runews/2010/07/30/afghanistan-election-will-still-include-suspected-war-criminals.html>.

¹⁴ Daily Tribune, Islamabad, December 12, 2009, 13.

¹⁵ Daily The News, Islamabad, August, 09, 2001, 15.

¹⁶ Pajwak Afghan News, Retrieved from <http://www.pajhwok.com/viewstory.asp?lng=eng&id=99676> . Accessed on August 10, 2010.

¹⁷ EnayatNajafizada (AFP), Retrieved from <http://www.google.com/hostednews/afp/article/ALeqM5ifZzQtPy48HeAHwJTiz43WoLAY6Q>. Retrieved on August 24, 2010.

The most serious threat was given to the women candidates contesting election. In Logar province, bulk of threats against candidates (9/10) focused on the women candidates.¹⁸ As the threat level in the election was high thus, it forced the government to close 800 polling centers and 1000 polling station that were operational during Presidential polls of 2009.¹⁹ The chief of Independent Election Commission (IEC), Fazel Ahmad Manwai, stated that no polling station will be open without adequate security.²⁰ Thus, there was a real threat to candidates, voters and women who dared to participate in the polls and it could ultimately lead to disfranchisement of a major portion of electorate. Moreover, insurgents armed and had network in local population could not be resisted collectively by communities. Those active in election either as candidate or political worker take care of themselves in individual capacities.

3. Warlordism

Many warlords became members of the parliament during the 2005 election despite criticism from public. This election, again, brought many warlords contesting for elections to *Ulasi Jirga*. This time again their entry was criticized by civil society and human right activist, being against the law clearly putting bar on candidate having links with illegal armed groups.²¹ They asserted the Electoral Complaint Commission to ban their entry. Public resentment against the warlords contesting election was observed in many cities of Afghanistan. The resident of Sar-e-Pol, a northern Afghan province, took to the streets against the nomination of Haji Mohammad Rahim and Gul Mohammad Pahlavan, the two prominent warlords. Haji Aman Otmanzai, a resident of Kanduz province, described most of the 80 candidates contesting election in his province, had been accused of crimes, and several still possessed illegal weapons.²² During this election, some

¹⁸ Retrieved from, <http://channel6newsonline.com/2010/08/five-volunteers-of-female-candidate-found-murdered-in-western-afghanistan-taliban-suspected/>. Accessed on August 30, 2010.

¹⁹ Trend News Agency, Retrieved from <http://en.trend.az/regions/world/afghanistan/1741147.html>. Retrieved on August 27, 2010.

²⁰ 2010 AFP. Retrieved from <http://www.google.com/hostednews/afp/article/ALeqM5jbwGDeJGjVKzsoHLKsh0Fe0mzGEwTopofForm>.

²¹ Retrieved from <http://www.rawa.org/temp/runews/2010/08/09/voting-cards-only-for-those-who-bribe-policemen.html>. Retrieved on 24 August 2010.

²² While Rahim, formerly a commander with the powerful, Tajik-dominated Jamiat-e-Islami faction, is a candidate in Sar-e Pul province; Pahlavan, who was a leading ethnic Uzbek militia commander in the 1990s, is standing in a neighbouring region, Faryab. Sar-e Pul residents' objections to both men stem from past abuses that armed groups allegedly under their command committed in that province.

previously elected warlords, such as, Abdul Rabb Rasul Sayyaf and Qasim Fahim, were again contesting, that could reflect a real concern.²³

Although the Electoral Complaint Commission (ECC) notified 31 candidates ineligible, on the recommendation of Voting Committee, but critics argued that none of the well-known warlord guilty of war crimes in the past, was included in this list.²⁴ But, spokesman of IEC, Ahmad Zia Rafat, blamed the legal framework that has a limited space from preventing alleged warlords. He further referred to a constitutional provision which stipulates that the potential contenders must have a clean past having no criminal conviction.²⁵

Thus, warlords were not excluded completely either, because they were politically influential or due to limited space available in law to deal with the issue. While those excluded from election, being warlords, generally regarded weak politically.

4. Nature of Election Campaign

Despite all fears and problems stated above, election campaign, gained momentum and continued in parts of the country. Many cities and districts were decorated with posters; banners of candidates and the local newspapers were full of election advertisements. A variety of ways and means were used by the candidates to reach to masses of their constituencies in various provinces. A candidate, Khadim Ali Khadim, a former commander of Wahdat Party, pictured himself on poster as a wild, long-haired, young *mujahid* (holy warrior). Others pasted pictures of national heroes on their posters, such as, Sayed Jamal-u-Din Afghani, Mir Wais), Ahmad Shah Abdali, Wazir Akbar Khan (the hero of First Anglo Afghan War), Dr. Najibullah, ex-President Sardar Da'ud, Kings Amanullah and king Habibullah (nick name Bacha-ye Saqao). In the West of Kabul, the picture of Abdul Ali Mazari, leader of Hezb-e-Wahdat, killed by the Taliban in 1995, was visible on the posters of many contestants. Ismat Qane, a candidate from Kabul has linked himself with several leaders like Mirwais Neekua, Ahmad Shah Durrani and Akbar Khan. Other candidates portrayed

²³ Fahim has long been implicated in possible war crimes from the 1990s and is widely perceived by many Afghans to be connected to criminal gangs. Fahim was a senior commander of the Jamiat-e-Islami during Afghanistan's civil war and a Human Rights Watch report found "credible and consistent evidence of widespread and systematic human rights abuses and violations of international humanitarian law.

²⁴ President Karzai himself cut deals with warlords and men implicated in past crimes ahead of last year's presidential election because of the votes they could deliver Perhaps not surprisingly, Afghanistan's parliament voted in secret three years ago to grant immunity from prosecution for war crimes to participants in the country's war against the Soviet's in the 1980s and the civil war that followed. That decision was publicized earlier this year.

²⁵ IWPR, July 29, 2010, IWPR-trained journalists - Afghanistan.

themselves as political and spiritual heirs of current known Afghans, like Dr. Abdullah, General Dostum, Mohammed Muhaqiq and Sayyed Naderi.²⁶

The campaign could equally reflect struggle of existing influential political families posted on important government positions to strengthen their hold. A network of brothers of ministers, daughters of MPs and relatives of heads of politico-religious groups, could have been observed. Brothers of General Dostum, Mohammad Karim Khalili, the Second Vice President, Minister of Education and Finance, Deputy Minister of Parliamentary Affairs, Head of the National Security Council and the Deputy Speaker of Parliament, were contesting election. Then there was cousin of the Minister of Defence, sister of the Chief of Army Staff, and the brother-in-law of former US ambassador to Afghanistan, Zalmi Khalilzad were contesting election. All this seems to be an attempt to enlarge the fortunes of the families by having one member in the government and another in parliament.²⁷ Thus, a number of candidates belonging to those having clouts in government, were contesting election.

Some political families fielded multiple candidates. For instance, five members of the sitting MP of Naderi family of Baghlan, Sayyid Mansur²⁸, a leader belonging to Ismaili militia, were running for election. Two candidates were fielded by the Gailanis²⁹, a very prominent religious family in politics. Similarly, a brother and son of Gulab Mangal, the governor of Helmand, were also contesting the elections.³⁰

A section of the educated Afghans youth was also contesting election; however, cultural norms certainly put them at disadvantage. In Afghan society, only older men are considered qualified to lead despite the reality that an educated youth could perform better than their bearded elders. A young candidate, Mansoor Naderi Farkhunda, daughter of the spiritual leader of Afghanistan's Ismaili sect, campaigning from Kabul held that her parliamentary platform is on women's rights and human rights.³¹ A few

²⁶ Daily Dawn, Islamabad, September, 29, 2011, 08.

²⁷ AAN has managed to come up with the following list of relatives of the powerful running for parliament.

²⁸ He has two sons running: Olfat (Baghlan) and Jaffar (Badakhshan, his election office was burned down in Faizabad) - and a daughter, Farkhonda (Kabul). There is also a son-in-law, Hossamuddin Haqbin (Baghlan), who is estranged from Mansur: whether or not his symbol - the axe - was chosen after finding out about his father-in-law's - the palm tree - is not known.

²⁹ The Gailanis fielded two candidates., both nephews of Pir Saheb Sayyed Ahmad: Mohammad Eshaq, a sitting MP in Paktika and Mahmoud Hossamuddin, a candidate in Ghazni.

³⁰ What's in a name? Relatives of the powerful run for parliament by [Kate Clark](#) AAN's senior analyst, Kate Clark, and political analyst, Gran Heward, have been looking at how the candidate lists illustrate who may be constituting the new Afghan elite - or rather, who from the younger generation is trying to find their place in the old elite.

³¹ *The Friday Times*, Islamabad, October, 2010, 06.

artistes and many television personalities, such as, comedians, actresses and sports stars, fielded themselves as candidates.

But all this didn't mean that everyone nominated himself or herself with the intention of either actually running or winning election. For many of the candidates, the election was a chance to raise their profile. They were hoping to be regarded as the leading politicians of their areas. A majority of candidates were those who wanted to use their candidature as a bargaining in respect of those who were the top runners of the constituency. Similarly, there were such candidates who just want to split the votes on behest of either one or the other candidate.³²

Thus, election campaign was not a contest between few major political parties rather derive its inspiration from a variety of sources. The pictures and posters could reflect the symbolic attachment, based on personality cult, varied ethnic, sectarian, tribal sensibilities and political affiliations of various candidates. The influence of fortune, family and current government position could also be smelt. However, contrary to that, a feeling of cynicism in the public was also present from majority of the candidates to deliver in real terms. A university teacher, Ghulam Farooq, from Balkh University is hopeless about the candidates from his province majority of whom not enjoying a good reputation among the people.

5. Party Less Election

Interestingly, during this election party affiliation was just one but not the whole factor for voter mobilization. Out of 110 political parties, only 5 could have the chance to field candidates in the election under the party logo. Some 20 political parties failed to register partly due to delays in government offices and partly due to the laziness of political parties. Thus, during the whole election only 31 candidates, out of total 2502, could contest under party's logo as only five parties could fulfill the re-registration requirement.³³

³² Martine van Bijlert: How to Win an Afghan Election, AAN Thematic Report 02/2009 6, *Candidates and their strategies*, :[Martine van Bijlert](#).

³³ The non-appearance of most of the parties on this year's ballot papers, however, must largely be blamed on themselves. Last year, the now outgoing parliament passed a new political party law which came into force on 9 September 2009. This law required a re-registration of the hitherto 110 officially recognized parties and gave them six months to do so, up to 8 March 2010. But for technical reasons, many parties did not receive the notification of the Ministry of Justice (or at least said they had not), and a frightening lack of awareness about events in the parliament (a number of parties admitted they did not know about the new law), the MoJ granted another three months to apply. This period ended on 5th June, dangerously close to the deadline for candidates to register on 21st June. Only five parties fulfilled the re-registration requirement by 21 June - the MoJ took some time beyond 5th June to process the papers. Almost 20 others ended up in limbo. They probably had submitted their documents in time, but the MoJ did not finish looking at them by the closing date for the registration of candidates. In practice, this means that they were

Thus, during the election, political parties were allowed but election was not contested on political ideologies. The shortage flatly could be put on the shoulders of political parties themselves due to their unawareness and lack of registration in time. Without political parties the ideology of the candidates was largely unofficial or confused and it was difficult to assess who was winning and who was losing.

6. Women Participation

As compare to elections of 2005, the elections in 2010 witnessed a sharp increase in the number of women candidates. According to one estimate, there was an increase of around 20% in women candidature for these elections.³⁴ This time some 406, compared to 328 in 2005 election, contested for 68 reserved seats in the *Ulsi Jirga*. Despite the fact that women candidates were more vulnerable to insurgent's attacks, their increased participation was a good sign.

PART II

Part II covers the post-poll impacts, such as, the people killed, the scams reported, various interpretations of these deceptions that ultimately led to differences between the Independent Election Commission and Attorney General Office. Main issues reported are as follow:

1. Fraud Observed

On September 18, 2010, out of the total of 11.4 million voters, around 4 million Afghans went for voting amidst Taliban's threats and attacks. At least 22 people were killed on poll day violence.³⁵ As soon as polls closed, a variety of election frauds were reported from various regions, ranging from use of multiple votes by single voter, poor quality of marking ink, easily erasable and the fake voter cards, considered to have been printed in Peshawar. In thirty-eight constituencies, cast vote was higher than the total votes, showing ballots were dishonestly cast in favour of the candidates. Similarly, instances of ballot-stuffing were reported and at certain polling stations, ballots were collected and simply doled out for cash payments by the local warlord.³⁶

discriminated against because only the five parties on the top of the pile got the chance to field 'official' candidates. Political Parties at the Fringes Again [Thomas Ruttig](#) Political Parties at the Fringes Again, posted: 13-09-2010.

³⁴ Women candidates for Afghan vote up: IEC (AFP) – May 13, 2010.

³⁵ Daily *The News*, Islamabad, September, 26, 2010, 09.

³⁶ *TOLO News*, Abdul Khaliq Fazal, Saturday, 16 October 2010.

Moreover, a major discrepancy in turnout was also reported. According to the estimates of Independent Election Commission some 4 million votes were to cast during the polls, but preliminary results reflected that the final estimate jumped to more than 5.6 million.³⁷

In Kandahar, reports were received of handcuffing of election officials and their detention, by provincial head of the border guards, Abdul Razziq, on the entire poll day. Thus, in Kandahar Province, most of the candidates who won seats in Parliament belonged to Karzai's tribe and his allies.³⁸

In some regions, use of money in buying votes was also reported. According to Babrak Shinwari, an independent from Nangarhar province, who lost election, there was almost no clean vote cast in his constituency, all votes cast were bought.³⁹ Similarly some cell phone video was also aired showing men marking a lot of ballots for particular candidates. A video was also recorded having representatives of a candidate dealing with the election officials about the price of votes inside a polling station.⁴⁰

Warlords also forced and influenced polling in their favour. In the eastern province of Nangarhar, almost all the candidate who won were former commanders, having gunmen under their control. In Farah province, fraud and use of force by the local warlords was reported, especially, in the district of Purchaman. When the preliminary results came out, it was found that people voted for two men who were virtual unknowns there.⁴¹

Before the election, the analysts predicted more fraud in Pakhtun areas, especially in the south, main base of President Karzai and Taliban. But, in fact, insecurity that prevailed in Pashtun area, had seriously affected the turnout in certain Pakhtun areas. The worst case was Ghazni province though with a majority of Pakhtuns but not a single Pakhtun was elected to the *Ulas Jirga*.⁴² In this province with a couple of districts, where members of the Hazara ethnic group predominate, hardly a vote for a Pakhtun candidate was cast because it was too dangerous in the area to go to polls.

2. Results Delayed

After these reports of fraud and election irregularities, Afghan election chief invalidated 1.3 million votes. The invalidated votes were related to some 440 polling centers.⁴³ Staffan de Mistura, the United Nations Secretary General special representative for Afghanistan stated that the number of

³⁷ Voice Of America News, October 28, 2010.

³⁸ Daily Dawn Islamabad, October,30,2010, 05.

³⁹ The New York Times - Africa By ALISSA J. RUBIN October 20, 2010.

⁴⁰ Daily Tribune, Islamabad, November,10,2010, 10.

⁴¹ Ibid, 10.

⁴² Ibid , 10.

⁴³ Tulu News.com, October 14, 2010.

invalidated identified votes by the I.E.C. showed considerable fraud and electoral irregularities.⁴⁴

Due to frauds, the final results got delayed and could not come out by the due date (October 30th). It was only after much wrangling and clarification of frauds that result of 33 provinces minus Ghazni were announced in November. It was only by December 1st that the election office announced the total result of 34 provinces, after a delay of almost two and a half months. As the result reached, it came out that all the winning 11 candidates from Ghazni were from ethnic group, Hazara. In one district of Ghazni only three Pakhtuns could use their votes.⁴⁵ Due to non-participation of Pakhtuns in polls in the province of Ghazni, they lost some 15 seats in the 249 member *Ulasi Jirga*.⁴⁶

There were concerns that Pakhtuns might react if all seats went to one ethnic group that too in minority in Ghazni and there were also speculations that IEC might call for a re-election in Ghazni. But the IEC stuck to its position and its Chairman, Fazal Ahmad Manawi,⁴⁷ announced the commission was above ethnicity, language or religious affiliations. He held that the body had completed its job with responsibility.

According to partial results, 72 members of *Ulasi Jirga* were re-elected to parliament but with 177 new faces. Another aspect of the polls was that all sitting MPs contested election. Only 25 did not contest election again⁴⁸, however, out of these 25 people, 15 were unwilling, and the other 10 were killed during their tenure.⁴⁹

⁴⁴ Ibid.

⁴⁵ *Tulu News*, December 14, 2010.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Fabrizio Foschini, Retrieved from <http://www.aan-afghanistan.org/index.asp?id=1031>, dated 17-9-2010. List of MPs not running again: Ustad Burhanuddin Rabbani (Badakhshan), Sultan Muhammad Awrang (Badakhshan), General Hilaluddin Hilal (Baghlan), Habibullah Ramin (Baghlan), Najiba Sharif (Kabul), Sabrina Saeed (Kabul), Taj Muhammad Mujahed (Kabul), Aref Nurzai (Kandahar), Ahmad Shah Achakzai (Kandahar), Mawlawi Atallah Ludin (Nangarhar), Gharghashta Katawazai Suleimankhel (Paktika), Sona Nilufar (Uruzgan), Piram Qul Ziahi (Takhar), Faizullah Zaki (Jowzjan), .Malalai Joya (Farah).

⁴⁹ Out of the 249 MPs elected in 2005, 10 have been killed during the legislative period and (at least) 15 other MPs do not run again (*). Almost all of the candidates run as 'independents', only 31 officially give a party affiliation (more details on this subject in an upcoming blog). List of killed MPs: Seyyed Mustafa Kazemi, (Kabul), Muhammad Aref Zarif (Kabul), Nazuk Mir Sarfaraz (Kunduz), Saheb-ur-Rahman Hemmat (Kunar), Engineer Abdul Matin (Helmand), Mawlawi Muhammad Islam Muhammadi (Samangan), Sebghatullah Zaki (Takhar), Fazlur-Rahman Chamkanai (Paktia), Haji Habibullah Khan (Kandahar), Dad Muhammad Khan, Helmand).

3. Differences Between IEC, Attorney General Office

Following announcement of results an unending row developed between the IEC and the pro-President Attorney General office. The IEC Chief Manwai argued that IEC had done its job professionally. On the other hand the Attorney General called for cancellation of results due to corruption, widespread fraud and injustice in the conduct of elections. He alleged the IEC and ECC with sufficient evidence had committed frauds and violations.⁵⁰ The Attorney General further suggested that final results of election might be cancelled by Supreme Court.

Electoral Complaints Commission (ECC), on the other hand, raised questions about the right of both the Supreme Court and the Attorney General to change the results. According to a spokesman of ECC,⁵¹ when the according to the law no organistaion possess the right to challenge the result, once the results are confirmed.

International observers feared the differences will be taken to the court by different parties which could delay the opening of the parliament. Although the election official expected parliament to be formed within a week but President was sticking to his gun to clear issues first. The president previously promised to inaugurate parliament by January 20, 2011. Confronted with a rebellion from lawmakers, Karzai backed down and finally open parliament on Wednesday, January 26.

4. Pakhtun Case

The Pakhtuns, who comprises around forty six percent of the total population of the country, representatives decreased by twenty-six seats in the new Parliament. According to Mirwais Yassini, a legislator, the Pakhtuns had 120 seats in the previous parliament; they now had just 96 members in the Ulasi Jirga of 249 members. Thus, several predominantly Pakhtun tribes have little or no representation in the new Parliament that naturally reduced the level of participation. This is a big blow to the policy of NATO's strategy which aims at alluring the Pakhtuns by means of increasing their presence in the government.⁵²

One reason for disenfranchisement was the failure of election authority to strengthen security in south and southeastern provinces, the Pakhtun dominated areas. Certain sources refer part of the problem to the 2009 fraud-ridden Presidential election of Mr. Karzai, especially in south and Pashtuns dominated area. In order to reduce the risk of fraud, the election commissioner Fazal Ahmad Manawi banned election in many of the most

⁵⁰ *Tulu News*, Attorney General Seeks Cancellation of Votes December 11, 2010.

⁵¹ *Daily Dawn*, Islamabad. November, 12, 2010, 07.

⁵² *The New York Times*, An Election Gone Wrong Fuels Tension in Kabul By CARLOTTA GALL and RUHULLAH KHAPALWAK.

insecure areas. As these areas were hit hard by insurgents thus, voters could not use their vote in many of the Pakhtun areas and tribes.⁵³

On September 9, 2010, the international rights group informed that the elections are going to be severely compromised due to poor government security. The Afghan election officials also held that 15% polling stations will not open due to security concerns in the country. Only in Nangarhar, the northeastern province of Afghanistan, 81 out of 458 polling stations were closed. While in the eastern and southern part of the country around 900 centers were officially closed due to security threats. The people of these areas were asked to go to safer stations if they want to cast their votes, neglecting the fact that to reach the safer stations these poor people have to pass through insurgent occupied areas.⁵⁴ Thus, instead of beefing up security and removing the gaps observed during Presidential election, the election authority closed the polling stations. According to an educator Abdul Bari from the area of Ghazni's Andar district, there was no election in his constituency as Taliban dominate the area and the officials cannot even dare to come there. The situation is self-evident from the fact that for an area having more than 70,000 registered voters, the majority of whom were Pakhtuns, only three ballots were cast.

This is why most of the Pakhtun candidates demanded either a recount or the complete annulment of the result. They claimed that the results are highly manipulated allowing for a majority of the northern ethnic minorities in the new parliament and marginalizing the majority Pakhtuns. Thus, on one hand the insurgency disenfranchised several hundred thousand voters in ethnic Pakhtun majority area, and, on the other, brought into power minority ethnic groups like Hazara. In Ghazni, a Pakhtun majority area, all the 11 seats went to Hazara Shia Muslim community. Thus, out of 249 seats in the lower house, 50 seats alone are occupied by Hazaras, an outsize portion of power compared with their numbers.

Conclusion

Whatever, gaps observed during the current election needs to be addressed next time before election. Security being the main concern needed to be boosted for transparency. Despite the fact that the United Nations provided both financial and technical support to the Independent Election Commission appointed by the Afghan government, and designated three members of the Electoral Complaints Commission (ECC), the loopholes and weaknesses in the process of election were so ominous that the U.N Secretary General warned of disengaging from any support in the future election. He was of the view that a lot has to be done from the appointment

⁵³ Ibid.

⁵⁴ Voice of America News, Rights Group: Violence Threatens Upcoming Afghan Poll, September 9, 2010.

of officials to the handling of election materials and security to ensure impartiality.⁵⁵ He feared that if the negative trends are not corrected, there is a risk that the deteriorating overall situation will become irreversible.⁵⁶

Besides these, the environment of tribal culture in form of tribalism and warlordism, have not only impacted adversely the Afghan society, but also deterred the democratic –political culture in Afghanistan. Due to non-availability of effective system of security, and electioneering, the elections of 2010 were not fulfilled as desired. Voter rigging, and corruption in form of buying votes during election, was not stopped. This was more necessary to curb this issue before the elections could be formed.

Political culture is not mature in Afghanistan. This is ensured by the fact that monarchy has just ended a few decades ago, and the civil society, is not working freely as comparing with its neighboring or regional states.

Therefore, in order to cope with the issue of political corruption during elections, democratic culture of political parties, civil society, and independent election commission is more than necessary to prop up in Afghanistan.

Finally, Pakhtun a majority ethnic group, in Afghanistan, if marginalized might have negative consequences on national politics. Next time security needed to be enhanced and more focus are put on Pakhtun dominated regions during elections. If major ethnic group, Pakhtuns, are alienated and keep them outside national politics shall mean more problem for state.

⁵⁵ Reuters, U.N. can't back more Afghan elections without reform, Jan 4, 2010.

⁵⁶ Reuters, United Nations, January 4, 2010.

APPENDIX I

List of parties in the 2010 election

The five parties with 'official' candidates (number of candidates on final list)

Hezb-e Musharekat-e Melli (National Participation Party).
 Hezb-e Muttahed-e Melli (National United Party).
 Hezb-e Wahdat-e Islami (Islamic Unity Party).
 Hezb-e Paiwand-e Melli (National Union Party).
 Nohzat-e Hambastagi-ye Melli (National Solidarity Movement).

Other registered parties (parties without 'official' candidates on the preliminary final candidates' lists in italics, in brackets: number of original candidates)

Hezb-e Jumhurikhwahan (Republican Party of Afghanistan).
Hezb-e Melli-ye Watan (National Fatherland Party).
Hezb-e Ensaf-e Melli (National Justice Party).
Hezb-e Da 'wat-e Islami (Islamic Invitation Party).
Hezb-e Melli-ye Fa 'alin-e Solh (National Peace Activists Party).
Hezb-e Melli-ye Hewad (Country's National).
Hezb-e Solh-e MelliwaIslami-ye Aqwam-e Afghanistan (National Peace Party of Afghanistan's Tribes).
Mahaz-e Melli-ye Islami (National Islamic Front).
Hezb-e Tawhid-e Mardom (People's Unity Party).
De Melli Wahdat Wolesi Tehrik (People's Movement for National Unity).
Hezb-e Wahdat-e Melli (National Unity Party).
Tolenpal Wuluswaki Gund (Social Democratic Party) [Afghan Mellat].
De Sole Ghurdzang Gund (Peace Movement Party).
Hezb-e-Nohzat-e Faragir-e DemokrasiwaTaraqi (Broad Movement for Democracy and Progress).
Hezb-e Tafahumwa Demokrasi (Understanding and Democracy Party).
Hezb-e Ensejam-e Melli (National Coordination Party).

Non-registered parties with 'official' candidates on the preliminary final candidates' lists

De KhalqEnqelabi Gond (Revolutionary People's Party).
De Qaumuno de MilliTafahom Nuhzat (Tribes' National Understanding Party).
Hezb-e Eqtedar-e Melli (National Rule Party).
Harakat-e Enqelab-e Islami (Islamic Revolution Movement).
Harakat-e Islami (Islamic Movement).

Hezb-e Adalat-e Ejtema'i (Social Justice Party).
Hezb-e Azadikhwahan-e Mardom (People's Liberty Party).
Hezb-e Dimokrat (Democratic Party).
Hezb-e Hambastagi-ye Milli-ye Jawanan (National Youth Solidarity Party).
Harakat-e Enqelab-e Islami wa Milli (Islamic and National Revolution Party).
Hezb-e Islami (Islamic Party).
Hezb-e Islami-ye Muttahed (United Islamic Party).
Hezb-e Refa'-e Melli (National Prosperity Party).
Hezb-e Solh-e Melli-ye Islami (Islamic National Peace Party).
Jabha-ye Nejat-e Melli (National Salvation Front).
Jamiat-e Islami (Islamic Association).
Jombesh-e Melli-ye Islami (National Islamic Movement).
Hezb-e Kar wa Tawse'a (Labour and Development Party).
Hezb-e Liberal (Liberal Party).
Kangara-ye Melli (National Congress).
Nuhzat-e Madani (Civil Movement).
Tehrik-e Wahdat-ul-Muslemin (Muslim Unity Movement).
Hezb-e Wahdat-e Melli-ye Islami (Islamic National Unity Party).
Hezb-e Wahdat-e Islami-ye Mardom (People's Islamic Unity Party).

APPENDIX II

Out of the 249 MPs elected in 2005, 10 have been killed during the legislative period and (at least) 15 other MPs do not run again. Almost all of the candidates run as 'independents', only 31 officially give a party affiliation.

List of killed MPs:

Seyyed Mustafa Kazemi (Kabul).
 Muhammad Aref Zarif (Kabul).
 Nazuk Mir Sarfaraz (Kunduz).
 Saheb-ur-Rahman Hemmat (Kunar).
 Engineer Abdul Matin (Helmand).
 Mawlawi Muhammad Islam Muhammadi (Samangan).
 Sebgatullah Zaki (Takhar).
 Fazlur-Rahman Chamkanai (Paktia).
 Haji Habibullah Khan (Kandahar).
 Dad Muhammad Khan (Helmand).

List of MPs not running again:

Ustad Burhanuddin Rabbani (Badakhshan).
 Sultan Muhammad Awrang (Badakhshan).
 General Hilaluddin Hilal (Baghlan).
 Habibullah Ramin (Baghlan).

Najiba Sharif (Kabul).
 Sabrina Saqeb (Kabul).
 Taj Muhammad Mujahed (Kabul).
 ArefNurzai (Kandahar) .
 Ahmad Shah Achakzai (Kandahar).
 Mawlawi Ataullah Ludin (Nangarhar).
 Gharghashta Katawazai Suleimankhel (Paktika).
 Sona Nilufar (Uruzgan).
 Piram Qul Ziahi (Takhar).
 Faizullah Zaki (Jowzjan).
 Malalai Joya (Farah).

APPENDIX III

A Network of Relatives of Political Leaders

1. Abdul Wali Baz (Kabul), brother of Karim Baz, Deputy Minister of Parliamentary Affairs.
2. Adela Bahram (Kabul), sister-in law of the head of the Republican Party and head of the Policy Department of the President's Office, Sebghatullah Sanjar.
3. Ahmad Wahid Taheri (MP for Herat) brother of Ragin Dadfar Spanta, Head of the National Security Council.
4. Ajmal Chamkani (Kabul), son of Haji Mohammad Chamkani, a tribal leader turned (party-less) vice president, who was acting president for two weeks during Dr. Najibullah's rule.
5. Dr Almas Bawar Zakhilwal (Kabul), brother of Minister of Finance, Omar Zakhilwal.
6. According to article 85 of the constitution, a person who is nominated or appointed as a member of the National Assembly should have the following qualifications. Ehsan Munawar (Nangrahar), brother-in law of Zalmi Khalilzad, former US ambassador to Afghanistan and father of Wali Munawar, Afghan Ambassador to Qatar.
7. Ezzatullah Wasefi (Kandahar), former Farah governor and controversial former head of the Anti-Corruption Commission, son of Alekozai leader in Kandahar and former minister from Da'ud Khan's government, Azizullah Wasefi.
8. The Gailanis: Sayyid Mahmud Hossamuddin (Ghazni), and Sayyid Eshaq (Paktika), both sons of the jihadi factional leader, Pir Sayyid Ahmad Gailani.
9. Hashmat Karzai (Kandahar), cousin of President Karzai and owner of the Asia Security Group (although ownership has recently been denied), and Jamil Karzai (another cousin and sitting MP for Kabul).
10. The Kufi sisters: Fauzia, MP (Badakhshan) and Mariam, hopeful candidate (Takhar).

11. Abdul Qader Imami Ghor, MP in Ghor, who, this time round, is standing as a candidate in Faryab, while his daughter Jamila Ghor runs in their home province.
12. Mirza Mangal (Paktia), brother of deputy Paktia governor, Abdul Rahman Mangal.
13. Mohammad Eshaq (Kandahar), brother of former Minister of Tribes and Borders and presidential advisor, Aref Nurzai.
14. Mohammad Zia Yari (Kabul), son of Senator Sulaiman Yari.
15. Haji Nabi Khalili (Kabul), brother of Second Vice President and leader of one of the split factions of Hizb-e Wahdat, Karim Khalili.
16. The Naderi family: Sayyid Mansur, MP (Baghlan) and former commander of an Ismaili militia; his son, former commander and former governor of Baghlan, Jaffar (Badakhshan); another son, Olfat (Baghlan); daughter, Farkhonda (Kabul); and son-in-law, Hossamuddin Haqbin, who is not running under his in-laws' name (Baghlan).
17. Qudratullah Zaki (Takhar), brother of the murdered MP, Sebghatullah Zaki.
18. Engineer Sher Wali Wardak (Kabul), brother of the Minister for Education, Faruq Wardak.
19. Sayyid Ali Kazemi (Kabul), brother of the late MP and leader of Eqtedar-e Melli, Sayyid Mustafa Kazemi, who was killed in the 2007 attack on the Baghlan Sugar factory.
20. Qadir Tariq (Kabul), cousin of the Minister of Defence, Rahim Wardak.
21. Zahera Sharif (Khost), MP, lecturer in Khost University and sister of General Shir Mohammad Karimi. Chief of Staff of the ANA.
22. QadirDostum (Jawzjan), brother of General Abdul-Rashid Dostam, factional leader of Jumbesh-e Melli.
23. Razia Sadat Mangal (Paktia), the daughter-in-law of former Interior Minister and Paktia governor, Taj Muhammad Wardak.

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MATERIALS USED FOR THE MANUSCRIPTS OF CENTRAL ASIA AND THE SUBCONTINENT

*Kanwal Khalid**

Abstract

Artists of the world use different styles and materials to express their creativity. All these are employed to get an end product, which is to show not only their skill level but to communicate thoughts, ideas and concepts. But this is not possible without some kind of medium. As compared to today, our previous generation of artists were very conscious regarding the durability of the artefacts they produced. They wanted their art pieces to last for centuries and due to this reason, a lot of attention was given to the preparation of these materials and special methods were evolved to get the best results. Availability of hundreds of years old art pieces, is an evidence to their success.

A lot has been written about miniature paintings and manuscripts that were produced during different eras but not much detail are available about the materials used by the artists. Present research is focused on those materials of miniatures and manuscripts with specific emphasis on the 18th and 19th century productions. Some myths are explored by employing modern day scientific methodology to prove their credibility.

Keywords: Medium, material, miniature painting, durability, methods, manuscripts, employing, scientific.

The continent of Asia has produced arts and cultures of high merit over the centuries. Different regimes came and contributed to the beauty of this region. Two such regions are Central Asia and the Subcontinent that has strong trade, cultural and artistic ties since hundred of years.

Aryans, the inhabitants of Central Asia, were no strangers to the Dravidians of the Subcontinent. They faced each other as hostile enemies and then the Aryans blended with the locals. This interaction encouraged

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caravan trade between the two regions. In later centuries, the early Muslims were dependent on Central Asian horses because India was not the land to breed good horse.

Sultanate rulers of the 13th century established the first Muslim culture in the Subcontinent, which was a combination of many other cultures. The poets, artists and artisans from Central Asia played an important role in this regard.

In 1526 Babur from Farghana established the Mughal Empire that ruled the Subcontinent for more than 300 years. Akbar had first ambassador from Bukhara, Hodzha Altamysh in 1572 and this was again a period of lots of exchanges between India and Central Asia. For the construction of Taj Mahal, Shah Jahan invited famous artists and artisans from all over the world including Central Asia. Great miniature masters Muhammad Murad and Muhammad Nadir Smarkandi also worked for Mughal ateliers because the miniature school of Central Asia was established long before the Mughal School and it was natural that it influenced the Indian painting. However, several decades later, it in turn, got influenced by the Mughal miniature. There was fruitful process of mutual enrichment and renewal.¹ Thus the relationship of the two regions was fluid and they were sharing lots of techniques and knowledge among themselves.

Artists, all over the world, choose different mediums to express their creativity. Every region has particular styles and materials that are being employed to create many expressions of arts. Miniature paintings and Calligraphic arts have their own specific requirements. The artists of previous generations did not buy their materials but prepared them on their own. The basic thought behind the making was to develop such pigments that would last centuries. They came up with innumerable materials, which could fulfil their requirement. As a result to their findings, the art works, which they produced hundred of years ago, look absolutely wonderful, even today.

A lot has been written about the manuscripts that were produced during different eras in Central Asia and the Subcontinent (Fig. 1) but not much detail is available about the materials used by the *Khatat* (Calligraphist) and *Musawwar* (Miniaturists). Artists of the previous generations were a firm believer of using papers and inks that were supposed to last centuries and for that they employed different methods, many of them were based on organic materials and these old masters were able to get the desired results. Evidence is the innumerable manuscripts scattered all around the world in different libraries, museums and private collections, which are matchless in quality and the inks and pigments used are as good as if they were prepared yesterday.

¹ J. N. Roy and B. B. Kumar, (Ed.s). *India and Central Asia Contemporary to Classical Periods*. Delhi: Astha Baharati Publishers, 2007: 50-56. Retrieved from www.asthabharati.org.



Fig 1: (Bihar-i-Danish ('The Romance of Jahandar Sultan and Bahravar Banu'), Mughal, late 17th/early 18th century, Lahore)

Present research is focused on the materials used for the manuscripts. Some myths are explored by employing modern day methodology to prove their credibility. Professor Dr Abdul Qayyum, Ph.D in Chemistry provided the expertise to verify the facts and corrected the fiction. I shared some of the traditional methods with him and he either confirmed or rejected the centuries old belief by analysing them scientifically.

Materials used for manuscripts are quite different and many of the artists were making their own but unfortunately there is no proper record available about them. The artists of that time never believed in writing them down. Mostly they relied on their memory and transferred them verbally to coming generations. In later years this verbal connection broke down and we lost precious information about the preparation of paper and pigments used.²

Significance of Calligraphic arts was immense. The arts of the book began with the selection of paper, the best kinds of which were prepared from silk combings (Samarkand was particularly famous for its production), and embraced the work of calligraphers, illuminators, miniature painters, and binders. Rulers and commoners, both were great patrons and admirers of arts. Many art forms were explored under the patronage of the kings who

² Some of the information, for the current research, is gathered through the interviews of senior miniaturist Mr. Salah ul Din, the curator/director of Faqir Khana Museum Lahore Faqir Saif ul Din, Prof. Dr. Abdul Qayyum Mirza, a Ph.D. in chemistry and Khalid Saeed Butt, Retired Professor College of Art & Design, Punjab University Lahore. I am really grateful to them for their guidance.

tried to select the best artists but they were also very conscious about the material that was used in the art works. Abul' Fazal, who was very close to the great Mughal king Akbar, writes, "The works of all painters are weekly laid before his majesty by *Daroghas* and the clerks; he then confers reward according to excellence of workmanship, or increases the monthly salaries."³ During the peak days of Akbar's rule, his atelier held more than three hundred artist. This is how Abul' Fazal narrates those times, "More than a hundred individuals have become masters of the art, whilst the number of those who are middling, is very large. This is very true of especially Hindus; their pictures surpass our conception of things. Few, indeed, in the whole world are found equal to them."⁴ Abul' Fazal also revealed that the prices of the material, used for manuscripts, were also decided by the king himself.⁵

We do come across some written material about the arts and the artists but not much was recorded about the materials and their preparation methods that were adopted by these masters. Most of the information was passed on orally but after the conquest of the British, due to their extremely discouraging attitude towards native arts, much of the indigenous knowledge and wisdom was lost. The main problem was of competition between England and Russia in Central Asia. Russian offense to Kazakhstan and British offence to India. In both cases, it was the local population that suffered the most. Indigenous arts were rejected. They went to such extent that the style of miniature painting was even ridiculed. B. H. Baden Powell was one of the main opponent of traditional styles and this is what he writes, "The actual work of drawing, the perspective, the method of delineation, and the style of producing 'effects' are as rule inferior; and this will surely be admitted when we have once reflected that the mere minuteness and delicacy of handling which many native works exhibit, and which occur in rendering the separate hairs of a beard, or the pearls on a tiny necklace, are a species of mechanical power intrinsically of a low order."⁶ In the same report, he writes, "No native artist has any idea of using eyes."⁷ Under the circumstances innumerable methods were lost forever that were used for the making of materials for the manuscripts including the inks and the pigments.

Preparation of Inks and the Pigments

Today almost every kind of ink is available in the market but this was not the case till mid 19th century and all the materials were prepared at

³ Annemarie Schimmel, Stuart Cary Welch. *Anvari's Divan: A Pocket Book for Akbar*. New York: The Metropolitan Museum of Art, 1983: 37.

⁴ Ibid., 37.

⁵ Ibid., 46.

⁶ B. H. Baden Powell, *Hand-Book of the Manufacturers and Arts of the Punjab*, Vol. II. Lahore: Punjab Printing Company, 1872: 341.

⁷ Ibid., 344.

individual level. Even today there are artists who prefer to make their own materials using methods and techniques that are hundreds of years old. They believe that the shine and everlasting quality can only be maintained through these processes. According to the old generation, modern colours lack the variety and freshness of the self-prepared colours. It was an essential part of their training as painters. "The artists, whether local or émigré, always depended upon the material and pigments which were available to them locally. They were proficient in preparation of these materials, i.e. paper, brushes, colours, etc. only then they were groomed as artists and Naqqash."⁸

These artists used different methods and ingredients to prepare their pigments and apart from some common materials, usually the technique varied from person to person. These techniques were very well guarded from rivals and they were never shared with anyone except for the son or some favourite disciple who had spent years in apprenticeship. This was a very discouraging attitude of the seniors and it affected the young artists. By the end of the 19th century, most of these techniques and methods were lost because the artists passed away without transferring them to anyone. Seniors tried not to share their knowledge and experience and this was the attitude of the whole society. As a result many art forms and techniques are lost in time.

By the beginning of the 20th century, a few people realized the folly of this attitude and they began documenting the ingredients and methods of making inks and paints. One such book was published in 1902 and it was titled as *Rasala-i-Raushnai* (Magazine of Inks). It has three hundred methods of making different inks. Detailed study of the book revealed the amazing processes of preparing toners that are both laborious and fascinating. Some of them have been included in current research. These were the methods that were practiced by the artists of the region and since Central Asia and the Subcontinent has deep relationship since centuries, so it was very natural that the calligraphist and the artists shared these techniques.

Most of the ingredients of these inks and pigments are organic and inorganic. Flowers, cow's urine, metals, minerals, fruits, vegetables and different herbs were used. Chemicals were also added. Some toners were obtained by the burning of different essence and gathering up their soot.

There has always been an impression that precious and semi precious stones were used in the making of particular pigments. To some extent it is true and stones like *Lajward* (Lapis lazuli) were used but another dimension of this belief was this that some colours were so expensive to make, that they were sold at the price of gold.

As was mentioned earlier every artist had a unique method of his own to prepare the required inks. These are very basic techniques for making the inks used by the artists and may be the methods are not very sophisticated but the local artists have been practicing them for centuries. According to the

⁸ R. P. Srivastava, *Punjab Painting*. New Delhi: Hans Raj Gupta & Sons, 1983: 63.

painters and calligraphers of the past, every ink and pigment was supposed to survive under the running water and it was a common saying that pages of the book can be withered but the ink cannot be washed away even if it is put in a sea.

Some methods and materials used for making the colours are part of this research.

Blue Colour

One source of getting this colour was *Neel*, a plant available all over India. Artists extracted blue colour from it. But *Sang-i-Lajward* (Lapis lazuli) was an excellent source to get the blue colour. This stone was imported from Afghanistan, Russia and China. (Fig. 2) No one can imagine the variety of hues and tones of blue it could produce when viewed in raw shape. Lapis lazuli is basically a mineral that has the hardness measured 2.5 or 3, which is easy to grind.



Fig. 2: Lapis Lazuli (Raw Form)

“*Naqqash* and calligraphers ground the lumps of Lapis lazuli and burnt it on fire. After the burning it was grinded one more time and was converted into fine powder. Wax, in melted form with olive oil, was added to this powder. Now soap like bars were obtained, which were put in warm water in a cup and they were rubbed with fingers. Initially the water would become black and was thrown away. Then a beautiful blue colour would appear, which was one of the most expensive pigments. After sometime this bar was shifted to another cup but the best and purest colour had already been obtained. The colour produced in the second cup was inferior in quality. After some more rubbing, the bar was shifted to a third cup. All the colours

after the first attempt are low in quality but the stone will keep on producing blue. The first colour is beautiful and long lasting. At the same time it is very expensive and was sold almost at the price of gold. But the problem was that smoke could destroy it. Europeans colour manufacturers, after many experiments are able to produce artificial Lapis lazuli that is far cheaper and smoke does not affect it.”⁹

Many hues and tones of blue like *Lajward* (sky blue), *Kaboodi* (azure) and *Susani* (lilac) could be obtained by mixing other chemicals and natural ingredients in this basic colour.¹⁰ (Fig. 3)



Fig. 3: (The Timurids and the Turkmen: Central Asia, 1370-c. 1500)

Turquoise Blue

To get this colour, *Burada* (sawdust) of pure *Tanba* or Copper *Waraq* (leaf) was put in *Naushadar* (Sal ammoniac or Aluminium Chloride) and *Sirka* (vinegar or Acetic Acid) that was half of the weight. This mixture was again placed in a damp place. After two weeks some of the copper will turn into *Zangar* (Verdigris or Copper Acetate). It was taken out and poured on *Kaghaz-i-Jazib* (absorbing paper) on a funnel and then cleansed with drops of pure water to get rid of the effect of vinegar. End result is a beautiful turquoise colour, which could be used after adding any gum.¹¹

⁹ Muhammad Abdul Aziz Mohtamam, (Ed.). *Rasal-i-Raushnai*. Printers: Khadam ul Taleem, Punjab Lahore, 1902: 74, 75.

¹⁰ Ibid., 75.

¹¹ Ibid., 76, 77.

Red Colour

There were many sources to get this colour but one of the best is *Shingaraf* (a by product of Cinnabar). (Fig. 4)



Fig. 4: Shingraf (Cinnabar) (Raw Form)

“To get a good red colour, mineral *Shangaraf* is used that can be obtained by mixing *Gandhak* (Sulphur) and *Para* (Mercury). It is pulverized in rainwater. After the grinding of three hours, yellow water is distilled and thrown away. Whole process is repeated till the yellow water is removed completely from the mixture. The material left as a residue is dried and later on used by adding some good glue.”¹² (Fig. 5)

¹² Ibid., 69.



Fig. 5: Radha and Krishna with Gopis, 18th c. Pahari.

According to Professor Dr. Abdul Qayyum, Hydro Choleric Acid and heating is also required to get vermillion colour. Otherwise a simple mixture of Sulphur and Mercury will produce Mercuric Sulphate, which is very dark in colour.¹³

In another method lemon essence (Citric Acid), lump of *Misri* (sugar) and mineral *Shingaraf* of the best quality are pulverized (grounded) and it is ready to be used after adding gum Arabic.¹⁴

Cinnabar is not the only material to obtain red colour. “In the suburbs of Bengal there are culinary herbs called ‘*Poen Ka Saag*’. It produces a fruit that is the size of Bar (a local fruit), which is full of red juice. This juice is employed as henna and if we add some citric, it can be used as ink or colour as well. But its quality is not persistent.”¹⁵

Sindur (Lead Oxide)¹⁶ and *Geru* (red chalk or brick dust or red earth) also give the warm red tone that tends towards orange. After grinding and cleaning *Sindur*, *Garu* gum is added and the colour is ready for use.¹⁷

Green Colour

There were many ways of obtaining this colour but the key ingredient was *Tanba* (Copper). Some Copper pieces are put in water. After a few days a green substance (Copper Oxide) would appear in water that was purified

¹³ Interview Prof. Dr. Abdul Qayyum.

¹⁴ Ed. Aziz Mohtamam, *Rasal-i-Raushnai*, 69.

¹⁵ Ibid., 71-72.

¹⁶ Retrieved from <https://pubchem.ncbi.nlm.nih.gov/compound/16685188>.

¹⁷ Ed. Aziz Mohtamam, *Rasal-i-Raushnai*, 79.

and used as a pigment. Another method was to put Copper in curd and after a few days a greenish substance could be extracted. The thick green layer on the old ships was also grounded and used as a green pigment (Copper Oxide).¹⁸

To get a good green colour, Copper has to be left in water for many days but if we add curd, it will speed up the process and green will appear in a short time. Copper Sulphate is an excellent shade of green that can be obtained by mixing Copper and Sulphuric Acid.¹⁹

Yellow Colour

Yellow colour had played a very important role in Indian art since ancient times, but in 19th century Sikh and Lahore paintings, its use was extensive. There were many ways of getting it. One was the urine of the cow that ate the flowers of *Sarson* (Mustard Sesame).²⁰

R. P. Srivastava has written that the cow fed on mangoes alone is used to get a particular colored urine that was put on fire and after the evaporation; the substance at the base of the utensil was purified²¹ and used as yellow colour in paintings and manuscripts.

There are some very interesting methods of getting different shades of yellow written in the *Rasala-i-Raushnai*. One of them includes *Kashmiri* Saffron, mixed thoroughly in water and later on used by adding some good gum.

The flowers of *Har Singhar* (a tree with yellowish flowers) are soaked in the water. After thickening and filtering, bright yellow colour is achieved to be used after adding the glue.

Grinded *Haldi* (Turmeric) with gum also produce a good yellow colour but it loses its tone if kept in the sun. The addition of Lime Water (Calcium Hydro Oxide) in Turmeric will give brown colour.²²

If iron is kept in the open with some moisture in the atmosphere, Iron Oxide will appear on it, which is a very fresh yellow. Zinc Chromate and Lead Chromate also give rich shades of yellow colour.²³

Golden Colour

Perhaps the most difficult colour to get was golden on paper. The method was very difficult, time consuming and expensive. Different painters

¹⁸ Interview Mr. Salah ul Din.

¹⁹ Interview Prof. Dr. Abdul Qayyum.

²⁰ Interview Mr. Salah ul Din.

²¹ Srivastava, *Punjab Painting*, 73.

²² Ed. Aziz Mohtamam, *Rasal-i-Raushnai*, 72-73.

²³ Interview Prof. Dr. Abdul Qayyum.

used different methods but one particular process, which the senior miniaturists of Lahore Salah ul Din, has been practicing is written below.²⁴

Common gold was buried in the slow fire of cow dug for hours. This process melted away all the impurities and a piece of *Kundan* (pure gold) was left behind. Gold in this form is very soft and brittle. It was put in the thin skin of the deer and hammered thoroughly till that thick lump turns into a very thin sheet called *Waraq* (leaf).

To grind the gold *Waraq* (leaf), clay bowl was used. The inner sides of this bowl were covered with glue and the thin leaf of gold was rubbed on it until turned into a very fine powder that could be used on the paper. But before its application on the paper, *Saffron* (Zairian) or *Sandur* (Red Lead) or *Mhendi* (Henna) was applied on the paper, mixed with some very good glue to give a base for the gold. The gold applied in this manner would stick to the paper for ages. (Fig. 6)



Fig. 6: 9th or 10th century Qur'an to which this folio once belonged has often been given a Maghribi attribution.

Due to these base colours, the use of gold can be brought down to the minimum and it also gives a yellow or reddish glow to the gold. This glow depended on the base colour because *Saffron* gives yellow shade and Red Lead is reddish in tone.

All these colours were basically transparent but due to the addition of Zinc Oxide, they would become opaque.

²⁴ Interview Mr. Salah ul Din.

For preparation of the pigments white clay pots were always recommended because they were good in quality and could bear all the heating and grinding.

Interaction with the European nations in Central Asia and the Subcontinent brought many changes in art and its material. For the first time there were ready-made colours available in the market. Famous company Winsor & Newton introduced colour sticks that were rubbed on stone and powder was obtained. This powder colour was applied on the paper by adding water to it. Later on cakes and tubes were introduced in the market and the concept of preparing colours at home was discarded but even today there are a few dedicated artists who still prefer to prepare their own colours.

Discovering of so many methods and techniques of making the pigments and inks used in paintings and manuscripts is highly significant. It can open up new avenues in the colour and ink making industry if combined with technology of the modern day.

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COMPARATIVE REVIEW OF PROVINCIAL ENVIRONMENTAL LEGISLATIONS

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Abstract

The Federal Government of Pakistan has legislated on the protection of environment in 1997. After Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan, 1973, the subject of environment devolved to the Provinces, and thereafter, all the Provinces legislated on environmental protection. This article has reviewed through comparison the post Eighteenth Amendment provincial legislation on environment, and has identified strengths and weaknesses of each of such legislation. Mostly, the legislation is the reproduction of the Federal legislation on environmental protection. Comparatively, the Balochistan, the Khyber Pakhtunkhwa and Sindh environmental legislations have incorporated new environmental concepts, while the Punjab legislation is a complete reproduction of the Federal legislation in verbatim. The article has made recommendations related to uniform development of law on the protection of environment in light of the environmental conventions and national policies of the federal government.

Introduction

In 2010, the Eighteenth Amendment to the Constitution of Islamic Republic of Pakistan, 1973, (hereinafter the Constitution), brought major changes which included abolishment of the Concurrent Legislative List (hereinafter the List).¹ The List contained items for legislation by both the federal and the provincial governments, however, the federal legislation used to have precedence over the provincial laws in case of conflict. The said List including items on environment and ecology, on the touch stone of the Eighteenth Amendment, the aforementioned items transferred to the

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¹ Mahmood, M., The Constitution of Islamic Republic of Pakistan, 1973, Pakistan Law Research Academy, Lahore, 2014, pp 810 and 1877.

provinces, as it is given in the Constitution that all residuary items will be the exclusive domain of the provinces.²

The Federal Government legislated on environment for the first time in 1983, however, the law was not implemented though it continued as legislative piece on legal texts.³ A new laws was legislated in 1997 by Federal Government which is called the Environmental Protection Act, 1997 (hereinafter the Federal Act, which repealed the previous law.⁴ The Federal Act is the main legislation on environmental protection in the country. Main provisions of the Federal Act are given in the following lines.

The Federal Act provided for the Pakistan Environmental Protection Council (hereinafter the Council), which is supreme executive body on environmental protection and is consisted of the Prime Minister, Minister of Environment of the Federal Government, Chief Ministers of the Provinces, Ministers of the Environment of the Provincial Governments etc.⁵ The Council approves environmental policies, supervise and enforce environmental law, review environmental reports and give directions related to environment.⁶ The composition of the Council is kept wide which is good in allowing a big number of people in decision making, however, a big number sometimes become a problem in prompt and timely decision.

The Federal Act has provisioned establishment of the Pakistan Environmental Protection Agency (hereinafter the Federal Agency), which is governed by a Director General, appointed by the Federal Government.⁷ Functions of the Federal Agency include preparation of environmental policies, adoption of measures for implementation of environmental law, publication of annual environmental report, coordination of environmental programs etc.⁸

The Federal Act has also instituted the Provincial Environmental Protection Agency (hereinafter the Provincial Agency) which work at provincial levels and will be headed by a Director General to be appointed by the respective Provincial Governments.⁹ Functions of the Provincial Agency are not enumerated in the Federal Act, 1997, however, the provincial government are given authority to assign any function to such Agency related to protection of environment.¹⁰

The Federal Act has prohibited discharges or emissions not falling with the allowed limits, initiation of developmental projects without subjecting

² Ibid, p 1821.

³ Saddiqui, F. M., *The Scope of Environmental Law in Pakistan*, Asia Law House, Karachi, 2000, p 338.

⁴ Ibid, p 380.

⁵ Ibid, p 389.

⁶ Ibid, p 390.

⁷ Ibid, p 391.

⁸ Ibid, p 392.

⁹ Ibid, p 399.

¹⁰ Ibid, p 399.

such projects to environmental impact assessment, hazardous wastes disposal by non-licensed persons, etc.¹¹

The Federal Act has provided for Environmental Magistrates and Environmental Tribunals which shall be responsible to try environmental cases, and the aforesaid Tribunals will be competent to exercise appellate jurisdiction in certain environmental cases decided by the Environmental Magistrates.¹²

It is to mention that the Federal Act was to serve as an umbrella legislation encompassing all possible aspects which are important towards environmental protection, however, the said Act is limited to very few measures. It is silent on the value and protection of wetland, prevention of desertification, dangerous drugs and chemicals, protection of endangered animals and plants. It is also to bring in notice that Pakistan is duty bound under several international environmental conventions such as Biodiversity Convention, Climate Change Convention, Conventions on Desertification and Convention on Cultural and Natural Heritage, however, no operative provisions has been made for compliance of the said Conventions.

As mentioned above, the Eighteenth Amendment abolished the Concurrent Legislative List, and therefore, the Federal Government is no more competent to legislate on environment for application to the provinces, and the provinces alone are enabled under the Constitution to legislate on environmental and ecological matters. The Federal Government is thus unable to legislate on environment which is giving rise to the question as how such Government will fulfill its international obligations, particularly, when such obligations require legislation. The provincial legislations have been compared and analyzed in the following lines

The Khyber Pakhtunkhwa Environmental Protection Act, 2014

The Government of Khyber Pakhtunkhwa passed the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (hereinafter the KP Act), and the Pakistan Environmental Protection Act, 1997, has been repealed in its application to the Province of Khyber Pakhtunkhwa.¹³

The KP Act is, to a great extent, the reproduction of the Federal Act, however, some new provisions are added which includes the following. The KP Act, added definitions of few words and phrases which were not there in the Federal Act, such as biosafety, electronic wastes, genetically modified organisms, locomotive, public compliant, radiation, strategic environmental assessment and reward.¹⁴ The powers and functions of the Environmental

¹¹ Ibid, p, 20 to 34.

¹² Ibid, pp 411 and 415.

¹³ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 457.

¹⁴ Ibid, pp 432-437.

Protection Council, given in the KP Act, is more detail than the Federal Act. It has the power to initiate and implement projects for the protection and rehabilitation of environment, promotion of eco-tourism, establishment of botanical gardens, and land zonation to save agriculture and forest.¹⁵ The KP Act has empowered the Environmental Protection Council to provide for the constitution of a high level Commission to resolve long standing land ownership disputes between the Government and the local communities pending in courts for long time.¹⁶

The Strategic Environmental Assessment means complete participatory analyses to ensure sustainable development as basis and integrated in development plans, programs or policies.¹⁷ It is obligatory to carry Strategic Environmental Assessment of the following policies and projects.¹⁸

1. Industrial, socio economic, agricultural, urban and rural developments
2. Projects related to land use, water management, natural resource exploitation, and establishment of economic zones, and
3. Policies and projects related to transport, infrastructure, solid wastes, industrial and municipal wastes, tourism, water pollution prevention, and control of sanitation of water flow in rivers.

It is the responsibility of the Provincial Government to allow public participation while formulating Strategic Environmental Assessment related to any policy or project.¹⁹

The KP Act provided for the minimum limit of punishment offences which was not given in the Federal Act.²⁰

The KP Act has responded to the international environmental conventions, and included in the functions of the Khyber Pakhtunkhwa Environmental Protection Council to formulate mechanism for the implementation of such conventions which are signed by the Federal Government.²¹ It has been mentioned that the Provincial Government may make rules for the implementation of the international environmental agreements which are specified in the Schedule attached to the Act.²²

The KP Act has included in aforementioned Schedule the Law of the Sea Convention, though, KP is a land locked Provinces, and, therefore, said Convention is not relevant to it. Like the Federal Act, the KP Act is also not a detail law, and has failed to appreciate incorporation of environmental protection measures, such as polluter pays principle, protection of natural heritage, incentive or reward for individual efforts towards environmental

¹⁵ Ibid, p 438.

¹⁶ Ibid, p 438.

¹⁷ Ibid, p 448.

¹⁸ Ibid, p 448.

¹⁹ Ibid, p 449.

²⁰ Ibid, p 452.

²¹ Ibid, p 439.

²² Ibid, p 439.

protection. The KP Act is in complete isolation to the local government, and local government may play vital role in the protection of environment. The KP Act has not provided any provision involving the Federal Government in decision making while for development of uniform environmental protection such role should have been ensured in the law. The provincial governments, mentioned above are competent to legislate on environment, however, such governments have not role in relation to international environmental conventions.

The Punjab Environmental Protection Act, 1997

The Government of Punjab adopted the Federal Act in verbatim through the Punjab Environmental Protection (Amendment) Act, 2012.²³ The words Pakistan and Federal are replaced with the words Punjab and Provincial, and the provision relating to Provincial Environmental Protection Agency has been deleted.²⁴

The Balochistan Environmental Protection Act, 2012

The Balochistan Environmental Protection Act, 2012 (hereinafter the Balochistan Act), repealed the Federal Act.²⁵ The Balochistan Act is also to a great extent the reproduction of the Federal Act, however, it came with some new definitions and provisions which were not there in the Federal Act. The words and expressions which are defined in the Balochistan Act include alien species, Balochistan coastal line, coastal zone, electronic wastes, best practicable environmental options, clinical wastes, endemic and indigenous species, genetic resources etc.²⁶

Balochistan coastline or coastal zone means the territorial jurisdiction of the coastline of the Province of Balochistan.²⁷ It has been supplemented by another provision of the Balochistan Act which says that activities or concentration or level of discharges from ports and shipping, fisheries, ship dismantling, oil and gas exploration, coastal power plant, oil refineries and industries shall be strictly monitored to prevent pollution and degradation of environment.²⁸ It has specifically mentioned that ship breaking at Gaddani or elsewhere in the coastal zone shall be subject to relevant provisions of the Basel Convention, Rotterdam Convention and any other relevant

²³ Punjablaws.gov.pk/laws (Retrieved on 13/01/2017).

²⁴ Ibid.

²⁵ <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 14/01/2017).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

Convention.²⁹ It has been declared to be an offense to discharge or dispose untreated sewage, domestic wastes and industrial effluents in the sea.³⁰

The Eighteenth Amendment has declared that natural resources found in the Provinces, adjacent to territorial waters, shall jointly and equally vest in that Province and the Federal Government.³¹ in the presence of this provision of the Constitution, the province are enabled to take measures related to protection of natural resources found in adjacent waters.

The Balochistan Act has required that every producer, distributor, collection center, recycler and dismantler shall not store electronic wastes for more than six months and shall maintain a record of collection, sale, transfer, storage and segregation of such wastes.³²

It has been laid in the Balochistan Act that the import of alien species and living modified organism is prohibited in Balochistan without a permit to be issued by the Government, and no such permit shall be issued unless there is reasonable certainty that no harm to indigenous natural resources or human health will result from the proposed introduction of such alien species and living modified organism.³³ It has mentioned that water resources are to be protected including associated ecosystem, biological diversity, ground water, wetlands and watersheds.

The Balochistan Act has empowered the Provincial Government to establish regional and District Environmental Protection Agency, and such agency shall have powers which may be given to them by such Provincial Government.³⁴ The Balochistan Act has failed to identify functions and powers of the respective Environmental Agency.

The Balochistan Act has mentioned a provision which deals with the resolution of disputes regarding environmental protection, as after Eighteenth Amendment there is likelihood of disputes between Provinces regarding certain issues. Section 11 of the said Act says that projects which fall within more than one Provincial geographical jurisdiction, the proponent of such project is required to submit the Initial Environmental Examination and the Environmental Impact Assessment to each of the Environmental Agencies of the concerned Provinces.³⁵ Disputes and concerns shall be addressed through mutual consultation between the Provinces, and such Provinces may constitute joint technical or review committee including a representative of the Federal Government dealing with environmental issues.³⁶ A matching provision is not found in any of the law on environment

²⁹ Ibid.

³⁰ Ibid.

³¹ Mahmood, M., *The Constitution of Islamic Republic of Pakistan*, 1973, Pakistan Law Research Academy, Lahore, 2015, p 851.

³² <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 14/01/2017).

³³ Ibid.

³⁴ Ibid.

³⁵ <https://bhc.gov.pk/resources/liberary/law-amendments/balochistan> (Retrieved on 18/01/2017).

³⁶ Ibid.

of the Provincial Governments, which deals with inter-Provincial environmental issues, not even the Federal Act has referred to the inter-provincial environmental issues and their resolution mechanism.

The Baluchistan Act is mindful of the international environmental agreements which are ratified by the Federal Government, and declares that such agreements will be observed as were observed before devolution through the Eighteenth Amendment.³⁷ Any international assistance with regard to international environmental agreements shall be proceeded in consultation recommendations from the Federal Government.³⁸ The KP Act has also referred to the implementation of the multi environmental agreements and has given authority to the KP Environmental Council the Power to formulate mechanism for the implementation of such multi environmental agreements which are ratified by the Federal Government,³⁹ however, none of these government have role to play in decision making process by the Federal Government in relation to implementation of international environmental conventions.

Like the KP Act the Balochistan Act has provided for the Strategic Environmental Assessment, and has it mandatory for all plans and programs to carry out environmental impacts of such plans and programs.⁴⁰

The Balochistan Act has given a detail provision which was never there in the Federal Act to deal with environmental matters identical to coastal zones. Section 23 has asked for monitoring activities onshore and offshore such as ports, shipping, fisheries, ship dismantling, oil and gas exploration, coastal power plants, oil refineries industries, and to prevent pollution from such activities and protect environment.⁴¹ Ship breaking at Gaddani or elsewhere in coastal belt or zone in the Province of Balochistan shall be subject to the obligations under the Basel Convention, Rotterdam Convention and other relevant international conventions and protocols.⁴² Ship breaking shall be carried in a manner as not to effect terrestrial and marine environment and such activities shall be strictly monitored.⁴³ Disposal of untreated water, domestic wastes and industrial effluents to sea is prohibited.⁴⁴

³⁷ Ibid.

³⁸ Ibid.

³⁹ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 439.

⁴⁰ <https://bhc.gov.pk/resources/libRARY/lAW-amendments/balochistan> (Retrieved on 17/02/2017).

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

The Sindh Environmental Protection Act, 2014

The Sindh Environmental Protection Act, 2014 (hereinafter the Sindh Act), like the above referred Acts, is also to large extent the reproduction of the Federal Act. It has provided with institutions just as provided in KP and Balochistan Act with little modifications, but by and large, structures and powers of the institutions are the same. The new additions and provisions brought by the Sindh Act which are not mentioned by the above referred include the following.

Biosafety has been defined which means the mechanism developing through policy and procedure to ensure human health and the environmentally safe application of biotechnology.⁴⁵ Similar definition of biosafety has been mentioned in the KP Act,⁴⁶ however, there is no such definition in the Federal Act, the Punjab Act and the Balochistan Act as well. The Sindh Act defines environmental aspect as an organization's activities or services that can interact with the environment.⁴⁷ Environment audit has been included for the first time which means a systematic scrutiny of environmental performances of an organization, factory, company or manufacturing and production unit regarding its operations.⁴⁸ The definition of environmental management plan has been introduced which means a site or specific plan developed to ensure that all necessary measures are identified and implemented in order to protect the environment and comply with the environmental legislation.⁴⁹ Section 19 of the Sindh Act has provided that the Sindh Environmental Protection Agency shall arrange environmental monitoring of all projects for protection of environment in accordance with Environmental Quality Standards.⁵⁰ The Sindh Act has provided for environmental review which means a quantitative and qualitative assessment of documents submitted by proponent, comments from public and Government agencies or organization.⁵¹ Section 20 the Sindh Act has mentioned detail regarding environmental and audit and review.⁵² It has defined non degradable plastic products and Oxo-biodegradable plastic products. Non degradable plastic products means a plastic product which are made from the non-biodegradable substances, while Oxo-biodegradable products means a plastic product made of a polymer by adding a pro-degrading additives containing a transition metal

⁴⁵ www.sindhlaws.gov.pk (Retrieved on 23/02/2017).

⁴⁶ Gazette of Khyber Pakhtunkhwa, The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014, p 433.

⁴⁷ www.sindhlaws.gov.pk (Retrieved on 23/02/2017).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

salt, except cobalt.⁵³ The Sindh Act has given definition of schedule plastic products which means all types of flexible plastic packaging and disposable plastic products made of polythene, polypropylene, polystyrene and polyethylene terephthalate, used for food and non-food items, likes shopping bags, garbage bags, snacks packs, water and milk packaging, shrink wraps, bubble pellets wrap, films, liners, woven or non-woven bags and mulch films.⁵⁴

The Sindh Act, like the KP and Balochistan Act has also provided for Strategic Environmental Assessment. It is pertinent to mention that out of four Provinces, the legislation on environment of the three Provinces has given provision regarding Strategic Environmental Assessment, while the same has not yet been incorporated by the Federal Act or by the Punjab Environmental Protection Act.

The government of Punjab has actually done nothing and has only reproduced the Federal Act as their law except change of some names, and it shows the interest and seriousness of the said government towards protection of environment.

Overall, the Balochistan Act is more detail in comparison to the Federal and other Provincial Acts, and is the first provincial legislation on environment after Eighteenth Amendment. The Balochistan Act has for the first time introduced the procedure of Strategic Environmental Assessment in Pakistan, and has now been adopted by other Provinces in their respective legislation on environment.

Conclusion

The Federal Act, before the Eighteenth Amendment, was the only law regulating environmental issues across the country. The Federal Act has ignored some important areas to address such as the significance, importance, promotion, protection and improvement of forest, agriculture, wetland, water, urban and rural development in relation to environment.

As mentioned above, after Eighteenth Amendment the Provinces are given authority to make laws on environment and ecology. All the provinces have laws of their own on environmental protection, which are mentioned in the above lines, however, one of these provinces have any Constitutional role in decision making related to implementation of international environmental conventions. The Provincial legislation, like the Federal Act, also failed to come up with umbrella legislation which could provide for protection of environment keeping all its important aspects in view. These Acts has not mentioned any provision on role and importance of forest,

⁵³ Ibid.

⁵⁴ Ibid.

agriculture, land, water, energy, urban and rural development with environment.

Some of the environmental issues are of cross provincial nature, such as pollution of the air, water and land, which require cooperation of all Provinces, however, the laws has not given effective provision on such cooperation, which is essential for protection of environment at the country level.

All the Provinces are needed to legislate a comprehensive umbrella document on environment which could encompass all relevant sectors of environment such as industry, factories, technology, forest, agriculture, wildlife, water, wetland, desertification, glaciers, land use, population, urban and rural development, poverty, and environmental education. The details of the comprehensive environmental document should be reflected in the relevant sector of environment. All the provinces should make specific provisions regarding their own environmentally significant areas, as some of the provinces have some specific environmentally important matters. The province of Khyber Pakhtunkhwa should make special focus on the protection of endangered species, historical, cultural and natural monuments, indigenous populations, and glaciers. Sindh and Balochistan should be more cognizant of significance of pollution of the adjacent waters, and wetlands, due to port operations. The Punjab should be specially addressing environmental aspects of industry and agriculture.

Environment cannot be dealt in isolation, and, therefore, there is a need of some mechanism where a uniform and detail law across the country be developed and it is possible once such mechanism is provided in the Constitution. In this regard it is recommended that the Council of Common Interest be enabled to deal with matters of environment. In this way the Federal Government will be in a better position to address implementation of international environmental conventions which has been ratified where such implementation requires legislation.

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